

By:

Robert D. ...

S.B. No. 344

A BILL TO BE ENTITLED

AN ACT

relating to the notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.101, Water Code, is amended by amending Subsection (b) and adding Subsections (d)-(j) to read as follows:

(b) After notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board. ~~[Notice in this section shall include publication of the agenda of the hearing in one or more newspapers of general circulation in the county or counties in which the district is located.]~~

(d) Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:

(1) post notice in a place readily accessible to the public at the district office;

(2) provide notice to the county clerk of each county in the district;

(3) publish notice in one or more newspapers of general circulation in the county or counties in which the district is located;

(4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (i);

1 and

2 (5) make available a copy of all proposed rules at a  
3 place accessible to the public during normal business hours or post  
4 an electronic copy on a generally accessible Internet site.

5 (e) The notice provided under Subsection (d) must include:

6 (1) the time, date, and location of the hearing;

7 (2) a brief explanation of the subject of the hearing;

8 and

9 (3) a location or Internet site at which a copy of the  
10 proposed rules may be reviewed or copied.

11 (f) The presiding officer shall conduct a rulemaking  
12 hearing in the manner the presiding officer determines to be most  
13 appropriate to obtain information and testimony relating to the  
14 proposed rule as conveniently and expeditiously as possible without  
15 prejudicing the rights of any person at the hearing. Comments may  
16 be submitted orally or in writing. The presiding officer may hold  
17 the record open for a specified period after the conclusion of the  
18 hearing to receive additional written comments.

19 (g) A district may require each person who participates in a  
20 rulemaking hearing to submit a hearing registration form stating:

21 (1) the person's name;

22 (2) the person's address; and

23 (3) whom the person represents, if the person is not at  
24 the hearing in the person's individual capacity.

25 (h) The presiding officer shall prepare and keep a record of  
26 each rulemaking hearing in the form of an audio or video recording  
27 or a court reporter transcription.

1       (i) A person may submit to the district a written request  
2 for notice of a rulemaking hearing. A request is effective for the  
3 calendar year in which the request is received by the district. To  
4 receive notice of a rulemaking hearing in a later year, a person  
5 must submit a new request. An affidavit of an officer or employee  
6 of the district establishing attempted service by first class mail,  
7 facsimile, or e-mail to the person in accordance with the  
8 information provided by the person is proof that notice was  
9 provided by the district.

10       (j) A district may use an informal conference or  
11 consultation to obtain the opinions and advice of interested  
12 persons about contemplated rules and may appoint advisory  
13 committees of experts, interested persons, or public  
14 representatives to advise the district about contemplated rules.

15       SECTION 2. Subchapter D, Chapter 36, Water Code, is amended  
16 by adding Section 36.1011 to read as follows:

17       Sec. 36.1011. EMERGENCY RULES. (a) A board may adopt an  
18 emergency rule without prior notice or hearing, or with an  
19 abbreviated notice and hearing, if the board:

20               (1) finds that a substantial likelihood of imminent  
21 peril to the public health, safety, or welfare, or a requirement of  
22 state or federal law, requires adoption of a rule on less than 20  
23 days' notice; and

24               (2) prepares a written statement of the reasons for  
25 its finding under Subdivision (1).

26       (b) Except as provided by Subsection (c), a rule adopted  
27 under this section may not be effective for longer than 90 days.

1        (c) If notice of a hearing on the final rule is given not  
2 later than the 90th day after the date the rule is adopted, the rule  
3 is effective for an additional 90 days.

4        (d) A rule adopted under this section must be adopted at a  
5 meeting held as provided by Chapter 551, Government Code.

6        SECTION 3. Sections 36.113 and 36.114, Water Code, are  
7 amended to read as follows:

8        Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) A  
9 district may ~~[shall]~~ require a permit ~~[permits]~~ for the drilling,  
10 equipping, operating, or completing of wells or for substantially  
11 altering the size of wells or well pumps. A district may require  
12 that a change in the withdrawal or use of groundwater during the  
13 term of a permit issued by the district may not be made unless the  
14 district has first approved a permit amendment authorizing the  
15 change.

16        (a-1) A district may not require a permit or a permit  
17 amendment for maintenance or repair of a well if the maintenance or  
18 repair does not increase the production capabilities of the well to  
19 more than its authorized or permitted production rate.

20        (b) A district shall require that an application for a  
21 permit or a permit amendment be in writing and sworn to.

22        (c) A district may require that the following be included in  
23 the permit or permit amendment application:

24                (1) the name and mailing address of the applicant and  
25 the owner of the land on which the well will be located;

26                (2) if the applicant is other than the owner of the  
27 property, documentation establishing the applicable authority to

1 construct and operate a well for the proposed use;

2 (3) a statement of the nature and purpose of the  
3 proposed use and the amount of water to be used for each purpose;

4 (4) a water conservation plan or a declaration that  
5 the applicant will comply with the district's management plan;

6 (5) the location of each well and the estimated rate at  
7 which water will be withdrawn;

8 (6) a water well closure plan or a declaration that the  
9 applicant will comply with well plugging guidelines and report  
10 closure to the commission; and

11 (7) a drought contingency plan.

12 (d) Before granting or denying a permit or permit amendment,  
13 the district shall consider whether:

14 (1) the application conforms to the requirements  
15 prescribed by this chapter and is accompanied by the prescribed  
16 fees;

17 (2) the proposed use of water unreasonably affects  
18 existing groundwater and surface water resources or existing permit  
19 holders;

20 (3) the proposed use of water is dedicated to any  
21 beneficial use;

22 (4) the proposed use of water is consistent with the  
23 district's certified water management plan;

24 (5) the applicant has agreed to avoid waste and  
25 achieve water conservation; and

26 (6) the applicant has agreed that reasonable diligence  
27 will be used to protect groundwater quality and that the applicant

1 will follow well plugging guidelines at the time of well closure.

2 (e) The district may impose more restrictive permit  
3 conditions on new permit applications and permit amendment  
4 applications to increase ~~[increased]~~ use by historic users if the  
5 limitations:

6 (1) apply to all subsequent new permit applications  
7 and permit amendment applications to increase ~~[increased]~~ use by  
8 historic users, regardless of type or location of use;

9 (2) bear a reasonable relationship to the existing  
10 district management plan; and

11 (3) are reasonably necessary to protect existing use.

12 (f) Permits and permit amendments may be issued subject to  
13 the rules promulgated by the district and subject to terms and  
14 provisions with reference to the drilling, equipping, completion,  
15 ~~[or]~~ alteration, or operation of, or production of groundwater  
16 from, [of] wells or pumps that may be necessary to prevent waste and  
17 achieve water conservation, minimize as far as practicable the  
18 drawdown of the water table or the reduction of artesian pressure,  
19 lessen interference between wells, or control and prevent  
20 subsidence.

21 ~~[(g) A district may require that changes in the withdrawal~~  
22 ~~and use of groundwater under a permit not be made without the prior~~  
23 ~~approval of a permit amendment issued by the district.]~~

24 Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND  
25 HEARING. (a) The district by rule shall determine each activity  
26 regulated by the district for which a permit or permit amendment is  
27 required.

1        (b) For each activity for which the district determines a  
2 permit or permit amendment is required under Subsection (a), the  
3 district by rule shall determine whether a hearing on the permit or  
4 permit amendment application is required.

5        (c) For all applications for which a hearing is not required  
6 under Subsection (b), the board shall act on the application at a  
7 meeting, as defined by Section 551.001, Government Code, unless the  
8 board by rule has delegated to the general manager the authority to  
9 act on the application.

10       (d) The district shall promptly consider and act on each  
11 administratively complete application for a permit or permit  
12 amendment as provided by Subsection (c) or Subchapter M.

13       (e) If, within 60 [30] days after the date an [the]  
14 administratively complete application is submitted, the [an]  
15 application has not been acted on or set for a hearing on a specific  
16 date, the applicant may petition the district court of the county  
17 where the land is located for a writ of mandamus to compel the  
18 district to act on the application or set a date for a hearing on the  
19 application, as appropriate.

20       (f) For applications requiring a hearing, the initial [A]  
21 hearing shall be held within 35 days after the setting of the date,  
22 and the district shall act on the application within 60 [35] days  
23 after the date [of] the final hearing on the application is  
24 concluded.

25       (g) The district may by rule set a time when an application  
26 will expire if the information requested in the application is not  
27 provided to the district.

1        (h) An administratively complete application requires  
2 information set forth in accordance with Sections 36.113 and  
3 36.1131.

4        SECTION 4. Subchapter L, Chapter 36, Water Code, is amended  
5 by adding Section 36.3705 to read as follows:

6        Sec. 36.3705. DEFINITION. In this subchapter, "applicant"  
7 means a newly confirmed district applying for a loan from the loan  
8 fund.

9        SECTION 5. Chapter 36, Water Code, is amended by adding  
10 Subchapter M to read as follows:

11        SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS;

12                    NOTICE AND HEARING PROCESS

13        Sec. 36.401. DEFINITION. In this subchapter, "applicant"  
14 means a person who is applying for a permit or a permit amendment.

15        Sec. 36.402. APPLICABILITY. Except as provided by Section  
16 36.415, this subchapter applies to the notice and hearing process  
17 used by a district for permit and permit amendment applications.

18        Sec. 36.403. SCHEDULING OF HEARING. (a) The general  
19 manager or board may schedule a hearing on permit or permit  
20 amendment applications received by the district as necessary, as  
21 provided by Section 36.114.

22        (b) The general manager or board may schedule more than one  
23 application for consideration at a hearing.

24        (c) A hearing must be held at the district office or regular  
25 meeting location of the board unless the board provides for  
26 hearings to be held at a different location.

27        (d) A hearing may be held in conjunction with a regularly



1 scheduled board meeting.

2 Sec. 36.404. NOTICE. (a) If the general manager or board  
3 schedules a hearing on an application for a permit or permit  
4 amendment, the general manager or board shall give notice of the  
5 hearing as provided by this section.

6 (b) The notice must include:

7 (1) the name of the applicant;

8 (2) the address or approximate location of the well or  
9 proposed well;

10 (3) for a permit amendment hearing, a brief  
11 explanation of the proposed amendment;

12 (4) the time, date, and location of the hearing; and

13 (5) any other information the general manager or board  
14 considers relevant and appropriate.

15 (c) Not later than the 10th day before the date of a hearing,  
16 the general manager or board shall:

17 (1) post notice in a place readily accessible to the  
18 public at the district office;

19 (2) provide notice to the county clerk of each county  
20 in the district; and

21 (3) provide notice by:

22 (A) regular mail to the applicant;

23 (B) regular mail, facsimile, or electronic mail  
24 to any person who has requested notice under Subsection (d); and

25 (C) regular mail to any other person entitled to  
26 receive notice under the rules of the district.

27 (d) A person may request notice from the district of a

1 hearing on a permit or a permit amendment application. The request  
2 must be in writing and is effective for the calendar year in which  
3 the request is received by the district. To receive notice of a  
4 hearing in a later year, a person must submit a new request. An  
5 affidavit of an officer or employee of the district establishing  
6 attempted service by first class mail, facsimile, or e-mail to the  
7 person in accordance with the information provided by the person is  
8 proof that notice was provided by the district.

9 (e) Failure to provide notice under Subsection (c)(3)(B)  
10 does not invalidate an action taken by the district at the hearing.

11 Sec. 36.405. HEARING REGISTRATION. The district may  
12 require each person who participates in a hearing to submit a  
13 hearing registration form stating:

14 (1) the person's name;  
15 (2) the person's address; and  
16 (3) whom the person represents, if the person is not  
17 there in the person's individual capacity.

18 Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be  
19 conducted by:

20 (1) a quorum of the board; or  
21 (2) an individual to whom the board has delegated in  
22 writing the responsibility to preside as a hearings examiner over  
23 the hearing or matters related to the hearing.

24 (b) Except as provided by Subsection (c), the board  
25 president or the hearings examiner shall serve as the presiding  
26 officer at the hearing.

27 (c) If the hearing is conducted by a quorum of the board and

1 the board president is not present, the directors conducting the  
2 hearing may select a director to serve as the presiding officer.

3 (d) The presiding officer may:

4 (1) convene the hearing at the time and place  
5 specified in the notice;

6 (2) set any necessary additional hearing dates;

7 (3) establish the order for presentation of evidence;

8 (4) administer oaths to all persons presenting  
9 testimony;

10 (5) examine persons presenting testimony;

11 (6) ensure that information and testimony are  
12 introduced as conveniently and expeditiously as possible without  
13 prejudicing the rights of any party; and

14 (7) prescribe reasonable time limits for testimony and  
15 the presentation of evidence.

16 (e) Any person, including the general manager or a district  
17 employee, may testify or present evidence at the hearing, unless:

18 (1) the district by rule limits testimony or the  
19 presentation of evidence to persons that the district determines to  
20 be affected by the subject matter of the hearing; or

21 (2) the presiding officer, under authority granted to  
22 the presiding officer by district rule, limits testimony or the  
23 presentation of evidence to persons who, in the presiding officer's  
24 determination, are affected by the subject matter of the hearing.

25 (f) The presiding officer may allow testimony to be  
26 submitted in writing and may require that written testimony be  
27 sworn to.

1       (g) The presiding officer may allow a person who testifies  
2 at the hearing to supplement the testimony given at the hearing by  
3 filing additional written materials with the presiding officer not  
4 later than the 10th day after the date of the hearing if no decision  
5 has been made by the board.

6       (h) The district by rule may authorize the presiding  
7 officer, at the presiding officer's discretion, to issue an order  
8 at any time before board action under Section 36.411 that:

9           (1) refers parties to a contested application hearing  
10 to an alternative dispute resolution procedure on any matter at  
11 issue in the hearing;

12           (2) determines how the costs of the procedure shall be  
13 apportioned among the parties; and

14           (3) appoints an impartial third party as provided by  
15 Section 2009.053, Government Code, to facilitate that procedure.

16       Sec. 36.407. EVIDENCE. (a) The presiding officer shall  
17 admit evidence that is relevant to an issue at the hearing.

18       (b) The presiding officer may exclude evidence that is  
19 irrelevant, immaterial, or unduly repetitious.

20       Sec. 36.408. RECORDING. (a) Except as provided by  
21 Subsection (b), the presiding officer shall prepare and keep a  
22 record of each hearing in the form of minutes, an audio or video  
23 recording, or a court reporter transcription. On the request of a  
24 party to a contested hearing, the presiding officer shall have the  
25 hearing transcribed by a court reporter. The presiding officer may  
26 assess any court reporter transcription costs against the party  
27 that requested the transcription or among the parties to the

1 hearing. The presiding officer may exclude a party from further  
2 participation in a hearing for failure to pay in a timely manner  
3 costs assessed against that party under this subsection.

4 (b) If a hearing is uncontested, the presiding officer may  
5 substitute the report required under Section 36.410 for a method of  
6 recording the hearing provided by Subsection (a).

7 Sec. 36.409. CONTINUANCE. The presiding officer may  
8 continue a hearing from time to time and from place to place without  
9 providing notice under Section 36.404. If the presiding officer  
10 continues a hearing without announcing at the hearing the time,  
11 date, and location of the continued hearing, the presiding officer  
12 must provide notice of the continued hearing by regular mail to  
13 persons who submitted a hearing registration form under Section  
14 36.405.

15 Sec. 36.410. REPORT. (a) Except as provided by Subsection  
16 (f), the presiding officer shall submit a report to the board not  
17 later than the 30th day after the date a hearing is concluded.

18 (b) The report must include:

19 (1) a summary of the subject matter of the hearing;  
20 (2) a summary of the evidence or public comments  
21 received; and

22 (3) the presiding officer's recommendations for board  
23 action on the subject matter of the hearing.

24 (c) The presiding officer or general manager shall provide a  
25 copy of the report to the applicant, and the applicant may submit to  
26 the board written exceptions to the report.

27 (d) A person who participated in the hearing may:

1           (1) submit a written request to review the report; and  
2           (2) submit to the board written exceptions to the  
3 report.

4           (e) The presiding officer or general manager shall mail a  
5 copy of the report to each person who requests to review the report  
6 under Subsection (d).

7           (f) If the hearing was conducted by a quorum of the board and  
8 if the presiding officer prepared a record of the hearing as  
9 provided by Section 36.408(a), the presiding officer shall  
10 determine whether to prepare and submit a report to the board under  
11 this section.

12           Sec. 36.411. BOARD ACTION. The board shall act on a permit  
13 or permit amendment application not later than the 60th day after  
14 the date the final hearing on the application is concluded.

15           Sec. 36.412. REQUEST FOR REHEARING AND APPEAL. (a) An  
16 applicant may appeal a decision of the board on a permit or permit  
17 amendment application by requesting a rehearing before the board  
18 not later than the 20th day after the date of the board's decision.

19           (b) A request for rehearing must be filed in the district  
20 office and must state the grounds for the request.

21           (c) If the board grants a request for rehearing, the board  
22 shall schedule the rehearing not later than the 45th day after the  
23 date the request is granted.

24           (d) The failure of the board to grant or deny a request for  
25 rehearing before the 91st day after the date the request is  
26 submitted constitutes a denial of the request.

27           Sec. 36.413. DECISION; WHEN FINAL. (a) A decision by the

1 board on a permit or permit amendment application is final:

2 (1) if a request for rehearing is not filed on time, on  
3 the expiration of the period for filing a request for rehearing; or

4 (2) if a request for rehearing is filed on time, on the  
5 date:

6 (A) the board denies the request for rehearing;

7 (B) the board renders a decision after rehearing;

8 or

9 (C) the request for rehearing is denied by  
10 operation of law.

11 (b) An applicant may not file suit against the district  
12 under Section 36.251 if a request for rehearing was not filed on  
13 time.

14 Sec. 36.414. ADDITIONAL PROCEDURES. A district by rule  
15 shall adopt procedural rules to implement this subchapter and may  
16 adopt notice and hearing procedures in addition to those provided  
17 by this subchapter.

18 Sec. 36.415. HEARINGS CONDUCTED BY STATE OFFICE OF  
19 ADMINISTRATIVE HEARINGS. This subchapter does not apply to a  
20 hearing conducted by the State Office of Administrative Hearings  
21 under Section 2003.021(b)(4), Government Code. If a district  
22 contracts with the State Office of Administrative Hearings to  
23 conduct a hearing, the hearing shall be conducted as provided by  
24 Subchapters C, D, and F, Chapter 2001, Government Code.

25 Sec. 36.416. ALTERNATIVE DISPUTE RESOLUTION. A district by  
26 rule may develop and use alternative dispute resolution procedures  
27 in the manner provided for governmental bodies under Chapter 2009,

1 Government Code.

2 Sec. 36.417. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT  
3 CODE. Except as provided by Section 36.415, Chapter 2001,  
4 Government Code, does not apply to a hearing under this subchapter.

5 SECTION 6. Section 36.001(17), Water Code, is repealed.

6 SECTION 7. The change in law made by this Act applies only  
7 to a permit or permit amendment application hearing or a rulemaking  
8 hearing held by a groundwater conservation district on or after the  
9 effective date of this Act. A permit or permit amendment  
10 application hearing or a rulemaking hearing held by a groundwater  
11 conservation district before the effective date of this Act is  
12 governed by the law in effect at the time the hearing was held, and  
13 the former law is continued in effect for that purpose.

14 SECTION 8. This Act takes effect September 1, 2005.



## **BILL ANALYSIS**

Senate Research Center  
79R2912 QS-D

S.B. 344  
By: Duncan  
Natural Resources  
4/27/2005  
As Filed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Chapter 36, Water Code, authorizes a groundwater conservation district to adopt rules and issue permits related to the regulation and management of groundwater resources located within its boundaries. Although Chapter 36 sets forth a requirement that rules be adopted only after notice and hearing, as well as makes reference to a hearings process for permit applications, the statute is silent on most aspects of the exact nature of the notice and hearings process that districts should utilize in rulemaking and permit considerations.

Since groundwater conservation districts are not subject to the Administrative Procedures Act, it is necessary to clarify and prescribe the notice and hearing process to be utilized by the districts. It is also necessary to clarify that, where appropriate, groundwater conservation districts may utilize alternative dispute resolution (ADR) procedures in the permitting process in order to facilitate resolution of conflicts and minimize costs for both the district and parties to a permit hearing.

As proposed, S.B. 344 sets forth uniform procedures to be utilized by groundwater conservation districts regarding the notice and hearings process for both rulemaking hearings and permit application hearings, and clarifies that districts may use ADR procedures.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the board of directors of a groundwater conservation district is modified by SECTION 1 (Section 36.101, Water Code) of this bill.

Rulemaking authority is expressly granted to the board of directors of a groundwater conservation district in SECTION 2 (Section 36.1011, Water Code).

Rulemaking authority is expressly granted to a groundwater conservation district in SECTION 3 (Section 36.114, Water Code) and SECTION 5 (Sections 36.406, 36.414, and 36.416, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 36.101, Water Code, by amending Subsection (b) and adding Subsections (d)-(j), as follows:

(b) Deletes the requirement that notice of the rulemaking hearing of the board of directors (board) of a groundwater conservation district (district) include publication of the agenda of the hearing in one or more newspapers of general circulation in the county or counties in which the district is located.

(d) Requires the general manager for the district or board, not later than the 20th day before the date of a rulemaking hearing, to provide notice by certain specified methods.

(e) Requires the notice provided under Subsection (d) to include certain information.

(f) Requires the presiding officer of the board to conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and testimony relating to the proposed rule as conveniently and expeditiously as possible without prejudicing the rights of any person at the hearing. Authorizes comments to be

submitted orally or in writing. Authorizes the presiding officer to hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.

(g) Authorizes a district to require each person who participates in a rulemaking hearing to submit a hearing registration form containing certain information.

(h) Requires the presiding officer to prepare and keep a record of each rulemaking hearing in one of certain formats.

(i) Authorizes a person to submit to the district a written request for notice of a rulemaking hearing. Provides that a request is effective for the calendar year in which the request is received by the district. Requires a person, to receive notice of a rulemaking hearing in a later year, to submit a new request. Provides that an affidavit of an officer or employee of the district establishing attempted service by various specified methods is proof that notice was provided by the district.

(j) Authorizes a district to use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules. Authorizes a district to appoint advisory committees of experts, interested persons, or public representatives to advise the district about contemplated rules.

SECTION 2. Amends Subchapter D, Chapter 36, Water Code, by adding Section 36.1011, as follows:

Sec. 36.1011. EMERGENCY RULES. (a) Authorizes a board to adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if certain conditions apply.

(b) Prohibits a rule adopted under this section from being effective for longer than 90 days, except as provided by Subsection (c).

(c) Provides that if notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) Requires a rule adopted under this section to be adopted at a meeting held as provided by Chapter 551 (Open Meetings), Government Code.

SECTION 3. Amends Sections 36.113 and 36.114, Water Code, as follows:

Sec. 36.113. New title: PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) Authorizes, rather than requires, a district to require a permit for certain actions related to wells. Includes operating a well as an activity for which a permit is required. Authorizes a district to require that a change in the withdrawal or use of groundwater during the term of a permit issued by the district not be made unless the district has first approved a permit amendment authorizing the change. Makes a nonsubstantive change.

(a-1) Prohibits a district from requiring a permit or a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.

(b) Requires a district to require that an application for a permit or permit amendment, rather than for a permit, be in writing and sworn to.

(c) Makes a conforming change.

(d) Makes a conforming change.

(e) Makes conforming and nonsubstantive changes.

(f) Authorizes permits and permit amendments to be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the operation of or production of groundwater from certain wells or pumps. Makes conforming and nonsubstantive changes.

(g) Deletes this subsection authorizing a district to require that changes in the withdrawal and use of groundwater under a permit not be made without the prior approval of a permit amendment issued by the district.

Sec. 36.114. New title: PERMIT; PERMIT AMENDMENT; APPLICATION AND HEARING. (a) Requires the district by rule to determine each activity regulated by the district for which a permit or permit amendment is required.

(b) Requires the district, by rule, for each activity for which the district determines a permit or permit amendment is required, to determine whether a hearing on the permit or permit amendment application is required.

(c) Requires the board, for all applications for which a hearing is not required, to act on the application at a meeting unless the board, by rule, has delegated to the general manager the authority to act on the application.

(d) Requires the district to promptly consider and act on each administratively complete application for a permit amendment as provided by Subsection (c) or Subchapter M. Creates this subsection from existing text.

(e) Provides that if, within 60, rather than 30, days after an administratively complete application is submitted, the application has not been acted on or set for a hearing, the applicant may petition the district court for certain remedies. Creates this subsection from existing text. Makes nonsubstantive changes.

(f) Requires an initial hearing under this subsection to be held for applications requiring a hearing within 25 days after the setting of the date. Requires the district to act on the application within 60, rather than 35, days after the date the final hearing on the application is concluded. Creates this subsection from existing text. Makes nonsubstantive changes.

(g) Creates this subsection from existing text.

(h) Creates this subsection from existing text.

SECTION 4. Amends Subchapter L, Chapter 36, Water Code, by adding Section 36.3705, as follows:

Sec. 36.3705. DEFINITION. Defines "applicant."

SECTION 5. Amends Chapter 36, Water Code, by adding Subchapter M, as follows:

SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS;  
NOTICE AND HEARING PROCESS

Sec. 36.401. DEFINITION. Defines "applicant."

Sec. 36.402. APPLICABILITY. Provides that, except as provided by Section 36.415, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications.

Sec. 36.403. SCHEDULING OF HEARING. (a) Authorizes the general manager or board to schedule a hearing on permit or permit amendment applications received by the district as necessary, as provided by Section 36.114.

(b) Authorizes the general manager or board to schedule more than one application for consideration at a hearing.

(c) Requires a hearing to be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location.

(d) Authorizes a hearing to be held in conjunction with a regularly scheduled board meeting.

Sec. 36.404. NOTICE. (a) Requires the general manager or board, if either schedules a hearing on an application for a permit or permit amendment, to give notice of the hearing as provided by this section.

(b) Sets forth the information the notice must include.

(c) Requires the general manager or board, not later than 10 days before the date of the hearing, to provide notice in certain specified ways.

(d) Authorizes a person to request notice from the district of a hearing on a permit or a permit amendment application. Requires the request to be in writing and provides that the request is effective for the calendar year in which the request is received by the district. Requires a person to submit a new request to receive notice of a hearing in a later year. Provides that an affidavit of an officer or employee of the district establishing attempted service by certain specified methods is proof that notice was provided by the district.

(e) Provides that failure to provide notice by certain specified methods to any person who has requested notice under Subsection (d) does not invalidate an action taken by the district at the hearing.

Sec. 36.405. HEARING REGISTRATION. Authorizes the district to require each person who participates in a hearing to submit a hearing registration form stating certain information.

Sec. 36.406. HEARING PROCEDURES. (a) Requires a hearing to be conducted by a quorum of the board or by an individual to whom the board has delegated in writing the responsibility to preside as hearings examiner over the hearing or matters related to the hearing.

(b) Requires the board president or the hearings examiner to serve as the presiding officer at the hearing, except as provided by Subsection (c).

(c) Authorizes the directors conducting the hearing, if the hearing is conducted by a quorum of the board and the board president is not present, to select a director to serve as presiding officer.

(d) Sets forth the functions related to the hearing that the presiding officer is authorized to perform.

(e) Authorizes any person, including the general manager or a district employee, to testify or present evidence at the hearing unless certain conditions apply.

(f) Authorizes the presiding officer to allow testimony to be submitted in writing and to require that written testimony be sworn to.

(g) Authorizes the presiding officer to allow a person who testifies at the hearing to supplement the testimony by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing if no decision has been made by the board.

(h) Permits the district by rule to authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before board action under Section 36.411 that refers parties to an alternative dispute resolution procedure, apportions costs among the parties, and appoints an impartial third party to facilitate the alternative dispute resolution.

Sec. 36.407. EVIDENCE. Requires the presiding officer to admit evidence that is relevant to an issue at the hearing. Authorizes the presiding officer to exclude evidence that is irrelevant, immaterial, or unduly repetitious.

Sec. 36.408. RECORDING. (a) Requires the presiding officer, except as provided by Subsection (b), to prepare and keep a record of each hearing in certain formats. Requires the presiding officer, on the request of a party to a contested hearing, to have the hearing transcribed by the court reporter. Authorizes the presiding officer to assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Authorizes the presiding officer to exclude a party from further participation in a hearing for failure to pay costs assessed under this subsection in a timely manner.

(b) Authorizes the presiding officer, if the hearing is uncontested, to substitute the report required under Section 36.410 for the record of the hearing provided by Subsection (a).

Sec. 36.409. CONTINUANCE. Authorizes the presiding officer to continue a hearing from time to time and from place to place without providing notice under Section 36.404. Requires the presiding officer, if the presiding officer continues a hearing without announcing at the hearing certain information regarding the continued hearing, to provide notice of the continued hearing by regular mail to certain persons.

Sec. 36.410. REPORT. (a) Requires the presiding officer, except as provided by Subsection (f), to submit a report to the board not later than the 30th day after a hearing is concluded.

(b) Sets forth the information the report is required to include.

(c) Requires the presiding officer or general manager to provide a copy of the report to the applicant. Authorizes the applicant to submit to the board written exceptions to the report.

(d) Authorizes a person who participated in the hearing to submit a written request to review the report and submit to the board written exceptions to the report.

(e) Requires the presiding officer or general manager to mail a copy of the report to each person who requests to review the report under Subsection (d).

(f) Requires the presiding officer, if the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing as provided by Section 36.408(a), to determine whether to prepare and submit a report under this section.

Sec. 36.411. BOARD ACTION. Requires the board to act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded.

Sec. 36.412. REQUEST FOR REHEARING AND APPEAL. (a) Authorizes an applicant to appeal a decision of the board on a permit or permit amendment application by requesting a rehearing before the board not later than the 20th day after the date of the board's decision.

(b) Requires a request for rehearing to be filed in the district office and to state the grounds for the request.

(c) Requires the board, if the board grants the request for rehearing, to schedule the rehearing not later than the 45th day after granting the request.

(d) Provides that the failure of the board to grant or deny a request for rehearing before the 91st day after the request is submitted constitutes a denial of the request.

Sec. 36.413. DECISION; WHEN FINAL. (a) Provides that a decision by the board on a permit or permit amendment is final if certain conditions apply.

(b) Prohibits an applicant from filing suit against the district under Section 36.251 (authorizing suits by any person or entity affected by any rule or order challenging the validity of the rule or order) if a request for a rehearing was not filed on time.

Sec. 36.414. ADDITIONAL PROCEDURES. Requires a district by rule to adopt procedural rules to implement this subchapter. Authorizes a district to adopt notice and hearing procedures in addition to those provided by this subchapter.

Sec. 36.415. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. Provides that this subchapter does not apply to a hearing conducted by the State Office of Administrative Hearings under Section 2003.021(b)(4) (authorizing the State Office of Administrative Hearings, for a fee and under a contract, to conduct administrative hearings or alternative dispute resolution proceedings in matters voluntarily referred to the office by a governmental entity), Government Code. Requires the hearing, if a district contracts with the State Office of Administrative Hearings to conduct a hearing, to be conducted as provided by Subchapters C, D, and F, Chapter 2001 (Administrative Procedure), Government Code.

Sec. 36.416. ALTERNATIVE DISPUTE RESOLUTION. Authorizes a district, by rule, to develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009 (Alternative Dispute Resolution for use by Governmental Bodies), Government Code.

Sec. 36.417. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT CODE. Provides that, except as provided by Section 36.415, Chapter 2001 (Administrative Procedure), Government Code, does not apply to a hearing under this subchapter.

SECTION 6. Repealer: Section 36.001(17) (defining "applicant"), Water Code.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2005.

1-1 By: Duncan S.B. No. 344  
1-2 (In the Senate - Filed February 3, 2005; February 7, 2005,  
1-3 read first time and referred to Committee on Natural Resources;  
1-4 May 3, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; May 3, 2005, sent  
1-6 to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 344 By: Armbrister

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the notice, hearing, rulemaking, and permitting  
1-11 procedures for groundwater conservation districts.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 36.101, Water Code, is amended by  
1-14 amending Subsection (b) and adding Subsections (d) through (l) to  
1-15 read as follows:

1-16 (b) Except as provided by Section 36.1011, after [After]  
1-17 notice and hearing, the board shall adopt and enforce rules to  
1-18 implement this chapter, including rules governing procedure before  
1-19 the board. [Notice in this section shall include publication of the  
1-20 agenda of the hearing in one or more newspapers of general  
1-21 circulation in the county or counties in which the district is  
1-22 located.]

1-23 (d) Not later than the 20th day before the date of a  
1-24 rulemaking hearing, the general manager or board shall:

1-25 (1) post notice in a place readily accessible to the  
1-26 public at the district office;

1-27 (2) provide notice to the county clerk of each county  
1-28 in the district;

1-29 (3) publish notice in one or more newspapers of  
1-30 general circulation in the county or counties in which the district  
1-31 is located;

1-32 (4) provide notice by mail, facsimile, or electronic  
1-33 mail to any person who has requested notice under Subsection (i);  
1-34 and

1-35 (5) make available a copy of all proposed rules at a  
1-36 place accessible to the public during normal business hours and, if  
1-37 the district has a website, post an electronic copy on a generally  
1-38 accessible Internet site.

1-39 (e) The notice provided under Subsection (d) must include:

1-40 (1) the time, date, and location of the rulemaking  
1-41 hearing;

1-42 (2) a brief explanation of the subject of the  
1-43 rulemaking hearing; and

1-44 (3) a location or Internet site at which a copy of the  
1-45 proposed rules may be reviewed or copied.

1-46 (f) The presiding officer shall conduct a rulemaking  
1-47 hearing in the manner the presiding officer determines to be most  
1-48 appropriate to obtain information and comments relating to the  
1-49 proposed rule as conveniently and expeditiously as possible.  
1-50 Comments may be submitted orally at the hearing or in writing. The  
1-51 presiding officer may hold the record open for a specified period  
1-52 after the conclusion of the hearing to receive additional written  
1-53 comments.

1-54 (g) A district may require each person who participates in a  
1-55 rulemaking hearing to submit a hearing registration form stating:

1-56 (1) the person's name;

1-57 (2) the person's address; and

1-58 (3) whom the person represents, if the person is not at  
1-59 the hearing in the person's individual capacity.

1-60 (h) The presiding officer shall prepare and keep a record of  
1-61 each rulemaking hearing in the form of an audio or video recording  
1-62 or a court reporter transcription.

1-63 (i) A person may submit to the district a written request

for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.

(j) A district may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the district about contemplated rules.

(k) Failure to provide notice under Subsection (d)(4) does not invalidate an action taken by the district at a rulemaking hearing.

(l) Subsections (b)-(k) do not apply to the Edwards Aquifer Authority.

SECTION 2. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1011 to read as follows:

Sec. 36.1011. EMERGENCY RULES. (a) A board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:

(1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and

(2) prepares a written statement of the reasons for its finding under Subdivision (1).

(b) Except as provided by Subsection (c), a rule adopted under this section may not be effective for longer than 90 days.

(c) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

(e) This section does not apply to the Edwards Aquifer Authority.

SECTION 3. Sections 36.113 and 36.114, Water Code, are amended to read as follows:

Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) Except as provided by Section 36.117, a [A] district shall require a permit ~~[permits]~~ for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A district may require that a change in the withdrawal or use of groundwater during the term of a permit issued by the district may not be made unless the district has first approved a permit amendment authorizing the change.

(a-1) A district may not require a permit or a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.

(b) A district shall require that an application for a permit or a permit amendment be in writing and sworn to.

(c) A district may require that the following be included in the permit or permit amendment application:

(1) the name and mailing address of the applicant and the owner of the land on which the well will be located;

(2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;

(3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

(4) a water conservation plan or a declaration that the applicant will comply with the district's management plan;

(5) the location of each well and the estimated rate at which water will be withdrawn;

(6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report



closure to the commission; and

(7) a drought contingency plan.

(d) Before granting or denying a permit or permit amendment, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) the applicant has agreed to avoid waste and achieve water conservation; and

(6) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

(e) The district may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase ~~increased~~ use by historic users if the limitations:

(1) apply to all subsequent new permit applications and permit amendment applications to increase ~~increased~~ use by historic users, regardless of type or location of use;

(2) bear a reasonable relationship to the existing district management plan; and

(3) are reasonably necessary to protect existing use.

(f) Permits and permit amendments may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, ~~or~~ alteration, or operation of, or production of groundwater from, ~~of~~ wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

~~[(g) A district may require that changes in the withdrawal and use of groundwater under a permit not be made without the prior approval of a permit amendment issued by the district.]~~

Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND HEARING. (a) The district by rule shall determine each activity regulated by the district for which a permit or permit amendment is required.

(b) For each activity for which the district determines a permit or permit amendment is required under Subsection (a), the district by rule shall determine whether a hearing on the permit or permit amendment application is required.

(c) For all applications for which a hearing is not required under Subsection (b), the board shall act on the application at a meeting, as defined by Section 551.001, Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.

(d) The district shall promptly consider and act on each administratively complete application for a permit or permit amendment as provided by Subsection (c) or Subchapter M.

(e) If, within 60 [30] days after the date an [the] administratively complete application is submitted, the [an] application has not been acted on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application, as appropriate.

(f) For applications requiring a hearing, the initial [A] hearing shall be held within 35 days after the setting of the date, and the district shall act on the application within 60 [35] days after the date [of] the final hearing on the application is concluded.

(g) The district may by rule set a time when an application will expire if the information requested in the application is not provided to the district.

(h) An administratively complete application requires information set forth in accordance with Sections 36.113 and 36.1131.

SECTION 4. Subchapter L, Chapter 36, Water Code, is amended by adding Section 36.3705 to read as follows:

Sec. 36.3705. DEFINITION. In this subchapter, "applicant" means a newly confirmed district applying for a loan from the loan fund.

SECTION 5. Chapter 36, Water Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS;  
NOTICE AND HEARING PROCESS

Sec. 36.401. DEFINITION. In this subchapter, "applicant" means a person who is applying for a permit or a permit amendment.

Sec. 36.402. APPLICABILITY. Except as provided by Section 36.416, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications.

Sec. 36.403. SCHEDULING OF HEARING. (a) The general manager or board may schedule a hearing on permit or permit amendment applications received by the district as necessary, as provided by Section 36.114.

(b) The general manager or board may schedule more than one application for consideration at a hearing.

(c) A hearing must be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location.

(d) A hearing may be held in conjunction with a regularly scheduled board meeting.

Sec. 36.404. NOTICE. (a) If the general manager or board schedules a hearing on an application for a permit or permit amendment, the general manager or board shall give notice of the hearing as provided by this section.

(b) The notice must include:

(1) the name of the applicant;  
(2) the address or approximate location of the well or proposed well;

(3) a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;

(4) the time, date, and location of the hearing; and

(5) any other information the general manager or board considers relevant and appropriate.

(c) Not later than the 10th day before the date of a hearing, the general manager or board shall:

(1) post notice in a place readily accessible to the public at the district office;

(2) provide notice to the county clerk of each county in the district; and

(3) provide notice by:

(A) regular mail to the applicant;

(B) regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d); and

(C) regular mail to any other person entitled to receive notice under the rules of the district.

(d) A person may request notice from the district of a hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.

(e) Failure to provide notice under Subsection (c)(3)(B) does not invalidate an action taken by the district at the hearing.

Sec. 36.405. HEARING REGISTRATION. The district may

require each person who participates in a hearing to submit a hearing registration form stating:

- (1) the person's name;
- (2) the person's address; and
- (3) whom the person represents, if the person is not there in the person's individual capacity.

Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be conducted by:

- (1) a quorum of the board; or
- (2) an individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing.

(b) Except as provided by Subsection (c), the board president or the hearings examiner shall serve as the presiding officer at the hearing.

(c) If the hearing is conducted by a quorum of the board and the board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.

(d) The presiding officer may:

- (1) convene the hearing at the time and place specified in the notice;

- (2) set any necessary additional hearing dates;
- (3) designate the parties regarding a contested application;

- (4) establish the order for presentation of evidence;
- (5) administer oaths to all persons presenting testimony;

- (6) examine persons presenting testimony;
- (7) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;

- (8) prescribe reasonable time limits for testimony and the presentation of evidence; and

- (9) exercise the procedural rules adopted under Section 36.415.

(e) Except as provided by a rule adopted under Section 36.415, a district may allow any person, including the general manager or a district employee, to provide comments at a hearing on an uncontested application.

(f) The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.

(g) If the board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.

(h) The district by rule adopted under Section 36.417 may authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before board action under Section 36.411 that:

- (1) refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;

- (2) determines how the costs of the procedure shall be apportioned among the parties; and

- (3) appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

6-1 Sec. 36.407. EVIDENCE. (a) The presiding officer shall  
 6-2 admit evidence that is relevant to an issue at the hearing.

6-3 (b) The presiding officer may exclude evidence that is  
 6-4 irrelevant, immaterial, or unduly repetitious.

6-5 Sec. 36.408. RECORDING. (a) Except as provided by  
 6-6 Subsection (b), the presiding officer shall prepare and keep a  
 6-7 record of each hearing in the form of an audio or video recording or  
 6-8 a court reporter transcription. On the request of a party to a  
 6-9 contested hearing, the presiding officer shall have the hearing  
 6-10 transcribed by a court reporter. The presiding officer may assess  
 6-11 any court reporter transcription costs against the party that  
 6-12 requested the transcription or among the parties to the hearing.  
 6-13 Except as provided by this subsection, the presiding officer may  
 6-14 exclude a party from further participation in a hearing for failure  
 6-15 to pay in a timely manner costs assessed against that party under  
 6-16 this subsection. The presiding officer may not exclude a party from  
 6-17 further participation in a hearing as provided by this subsection  
 6-18 if the parties have agreed that the costs assessed against that  
 6-19 party will be paid by another party.

6-20 (b) If a hearing is uncontested, the presiding officer may  
 6-21 substitute minutes or the report required under Section 36.410 for  
 6-22 a method of recording the hearing provided by Subsection (a).

6-23 Sec. 36.409. CONTINUANCE. The presiding officer may  
 6-24 continue a hearing from time to time and from place to place without  
 6-25 providing notice under Section 36.404. If the presiding officer  
 6-26 continues a hearing without announcing at the hearing the time,  
 6-27 date, and location of the continued hearing, the presiding officer  
 6-28 must provide notice of the continued hearing by regular mail to the  
 6-29 parties.

6-30 Sec. 36.410. REPORT. (a) Except as provided by Subsection  
 6-31 (e), the presiding officer shall submit a report to the board not  
 6-32 later than the 30th day after the date a hearing is concluded.

6-33 (b) The report must include:  
 6-34 (1) a summary of the subject matter of the hearing;  
 6-35 (2) a summary of the evidence or public comments  
 6-36 received; and  
 6-37 (3) the presiding officer's recommendations for board  
 6-38 action on the subject matter of the hearing.

6-39 (c) The presiding officer or general manager shall provide a  
 6-40 copy of the report to:

6-41 (1) the applicant; and  
 6-42 (2) each person who provided comments or each  
 6-43 designated party.

6-44 (d) A person who receives a copy of the report under  
 6-45 Subsection (c) may submit to the board written exceptions to the  
 6-46 report.

6-47 (e) If the hearing was conducted by a quorum of the board and  
 6-48 if the presiding officer prepared a record of the hearing as  
 6-49 provided by Section 36.408(a), the presiding officer shall  
 6-50 determine whether to prepare and submit a report to the board under  
 6-51 this section.

6-52 Sec. 36.411. BOARD ACTION. The board shall act on a permit  
 6-53 or permit amendment application not later than the 60th day after  
 6-54 the date the final hearing on the application is concluded.

6-55 Sec. 36.412. REQUEST FOR REHEARING OR FINDINGS AND  
 6-56 CONCLUSIONS. (a) An applicant in a contested or uncontested  
 6-57 hearing on an application or a party to a contested hearing may  
 6-58 administratively appeal a decision of the board on a permit or  
 6-59 permit amendment application by requesting written findings and  
 6-60 conclusions or a rehearing before the board not later than the 20th  
 6-61 day after the date of the board's decision.

6-62 (b) On receipt of a timely written request, the board shall  
 6-63 make written findings and conclusions regarding a decision of the  
 6-64 board on a permit or permit amendment application. The board shall  
 6-65 provide certified copies of the findings and conclusions to the  
 6-66 person who requested them, and to each person who provided comments  
 6-67 or each designated party, not later than the 35th day after the date  
 6-68 the board receives the request. A person who receives a certified  
 6-69 copy of the findings and conclusions from the board may request a

rehearing before the board not later than the 20th day after the date the board issues the findings and conclusions.

(c) A request for rehearing must be filed in the district office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.

(d) If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.

(e) The failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

Sec. 36.413. DECISION; WHEN FINAL. (a) A decision by the board on a permit or permit amendment application is final:

(1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or

(2) if a request for rehearing is filed on time, on the date:

(A) the board denies the request for rehearing; or

(B) the board renders a written decision after rehearing.

(b) Except as provided by Subsection (c), an applicant or a party to a contested hearing may file a suit against the district under Section 36.251 to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.

(c) An applicant or a party to a contested hearing may not file suit against the district under Section 36.251 if a request for rehearing was not filed on time.

Sec. 36.414. CONSOLIDATED HEARING ON APPLICATIONS.

(a) Except as provided by Subsection (b), a district shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the district requires a separate permit or permit amendment application for:

(1) drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump under Section 36.113;

(2) the spacing of water wells or the production of groundwater under Section 36.116; or

(3) transferring groundwater out of a district under Section 36.122.

(b) A district is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the board cannot adequately evaluate one application until it has acted on another application.

Sec. 36.415. RULES; ADDITIONAL PROCEDURES. (a) A district by rule shall adopt procedural rules to implement this subchapter and may adopt notice and hearing procedures in addition to those provided by this subchapter.

(b) In adopting the rules, a district shall:

(1) define under what circumstances an application is considered contested; and

(2) limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within a district's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public.

Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. If a district contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.

Sec. 36.417. RULES; ALTERNATIVE DISPUTE RESOLUTION. A district by rule may develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under

Chapter 2009, Government Code.

Sec. 36.418. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. (a) A district may adopt rules establishing procedures for contested hearings consistent with Subchapters C, D, and F, Chapter 2001, Government Code, including the authority to issue a subpoena, require a deposition, or order other discovery.

(b) Except as provided by this section and Section 36.416, Chapter 2001, Government Code, does not apply to a hearing under this subchapter.

Sec. 36.419. EDWARDS AQUIFER AUTHORITY. (a) Except as provided by Subsection (b), this subchapter does not apply to the Edwards Aquifer Authority.

(b) Sections 36.412 and 36.413 apply to the Edwards Aquifer Authority.

SECTION 6. Subdivision (17), Section 36.001, Water Code, is repealed.

SECTION 7. The change in law made by this Act applies only to a permit or permit amendment application determined to be administratively complete or a rulemaking hearing for which notice is given by a groundwater conservation district on or after the effective date of this Act. A permit or permit amendment application determined to be administratively complete or a rulemaking hearing for which notice was given by a groundwater conservation district before the effective date of this Act is governed by the law in effect at the time the application was determined to be administratively complete or the notice was given, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2005.

\* \* \* \* \*

FAVORABLY AS SUBSTITUTED  
SENATE COMMITTEE REPORT ON

(SB) SCR SJR SR HB HCR HJR 344  
By Duncan  
(Author/Senate Sponsor)  
5-3-05  
(date)

We, your Committee on NATURAL RESOURCES, to which was referred the attached measure,  
have on 4/28/05, had the same under consideration and I am instructed to report it  
(date of hearing)  
back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed  
☒ the caption remained the same as original measure  
☐ the caption changed with adoption of the substitute  
  
☐ do pass as substituted, and be ordered not printed  
☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☒ yes ☐ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Armbrister, Chair	<input checked="" type="checkbox"/>			
Senator Jackson, Vice-Chair	<input checked="" type="checkbox"/>			
Senator Barrientos	<input checked="" type="checkbox"/>			
Senator Duncan			<input checked="" type="checkbox"/>	
Senator Estes	<input checked="" type="checkbox"/>			
Senator Fraser	<input checked="" type="checkbox"/>			
Senator Hinojosa			<input checked="" type="checkbox"/>	
Senator Lindsay	<input checked="" type="checkbox"/>			
Senator Madla	<input checked="" type="checkbox"/>			
Senator Seliger	<input checked="" type="checkbox"/>			
Senator Staples			<input checked="" type="checkbox"/>	
TOTAL VOTES	8	0	3	0

COMMITTEE ACTION

S260 Considered in public hearing  
S270 Testimony taken

Wally C. Miller  
COMMITTEE CLERK

[Signature]  
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute  
Retain one copy of this form for Committee files

WITNESS LIST

SB 344

SENATE COMMITTEE REPORT

Natural Resources

April 28, 2005 - 1:30PM

FOR:       Kowis, James   (TWCA Groundwater Subcommittee), Austin, TX  
          Mahoney, Mike   (Evergreen Underground Water Conservation Dist.), Pleasanton, TX  
          Williams, CE   (Tx Groundwater Coalition), WhiteDeer, TX

Registering, but not testifying:

For:       Buckner, Luana B   (Medina County Ground Water Conservation District), Hondo, TX  
          Butler, Susan   (San Antonio Water System), San Antonio, TX  
          Conkwright, Jim   (High Plains Underground Water Conservation Dist #1), Lubbock, TX  
          Hess, Myron   (National Wildlife Federation), Austin, TX  
          Howe, Billy   (Texas Farm Bureau), Austin, TX  
          Kelly, Mary   (Environmental Defense), Austin, TX  
          Kramer, Ken   (Lone Star Chapter, Sierra Club), Austin, TX  
          O'Brien, Beth   (Public Citizen), Austin, TX  
          Petersen, Ken   (Tx Rural Water Association), Austin, TX  
          Robbins, Dean   (Texas Water Conservation Association), Austin, TX  
          Stephens, V.A.   (Brewster County Groundwater Conservation District), Austin, TX



## **BILL ANALYSIS**

Senate Research Center  
79R12627 QS-D

C.S.S.B. 344  
By: Duncan  
Natural Resources  
5/3/2005  
Committee Report (Substituted)

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Chapter 36, Water Code, authorizes a groundwater conservation district to adopt rules and issue permits related to the regulation and management of groundwater resources located within its boundaries. Although Chapter 36 sets forth a requirement that rules be adopted only after notice and hearing, as well as makes reference to a hearings process for permit applications, the statute is silent on most aspects of the exact nature of the notice and hearings process that districts should utilize in rulemaking and permit considerations.

Since groundwater conservation districts are not subject to the Administrative Procedures Act, it is necessary to clarify and prescribe the notice and hearing process to be utilized by the districts. It is also necessary to clarify that, where appropriate, groundwater conservation districts may utilize alternative dispute resolution (ADR) procedures in the permitting process in order to facilitate resolution of conflicts and minimize costs for both the district and parties to a permit hearing.

C.S.S.B. 344 sets forth uniform procedures to be utilized by groundwater conservation districts regarding the notice and hearings process for both rulemaking hearings and permit application hearings, and clarifies that districts may use ADR procedures.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the board of directors of a groundwater conservation district is modified by SECTION 1 (Section 36.101, Water Code) of this bill.

Rulemaking authority is expressly granted to the board of directors of a groundwater conservation district in SECTION 2 (Section 36.1011, Water Code).

Rulemaking authority is expressly granted to a groundwater conservation district in SECTION 3 (Section 36.114, Water Code) and SECTION 5 (Sections 36.406, 36.415, 36.417, and 36.418, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 36.101, Water Code, by amending Subsection (b) and adding Subsections (d)-(l), as follows:

(b) Creates an exception, as provided by Section 36.1011, to the requirement that the board of directors (board) of a groundwater conservation district (district) adopt and enforce rules to implement this chapter. Deletes the requirement that notice of the rulemaking hearing of the board include publication of the agenda of the hearing in one or more newspapers of general circulation in the county or counties in which the district is located.

(d) Requires the general manager for the district or board, not later than the 20th day before the date of a rulemaking hearing, to provide notice by certain specified methods.

(e) Requires the notice provided under Subsection (d) to include certain information.

(f) Requires the presiding officer of the board to conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and

comments relating to the proposed rule as conveniently and expeditiously as possible. Authorizes comments to be submitted orally at the hearing or in writing. Authorizes the presiding officer to hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.

(g) Authorizes a district to require each person who participates in a rulemaking hearing to submit a hearing registration form containing certain information.

(h) Requires the presiding officer to prepare and keep a record of each rulemaking hearing in one of certain formats.

(i) Authorizes a person to submit to the district a written request for notice of a rulemaking hearing. Provides that a request is effective for the remainder of the calendar year in which the request is received by the district. Requires a person, to receive notice of a rulemaking hearing in a later year, to submit a new request. Provides that an affidavit of an officer or employee of the district establishing attempted service by various specified methods is proof that notice was provided by the district.

(j) Authorizes a district to use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules. Authorizes a district to appoint advisory committees of experts, interested persons, or public representatives to advise the district about contemplated rules.

(k) Provides that failure to provide notice to persons requesting notice under Subsection (i) does not invalidate an action taken by the district at a rulemaking hearing.

(l) Provides that Subsections (b)-(k) do not apply to the Edwards Aquifer Authority.

SECTION 2. Amends Subchapter D, Chapter 36, Water Code, by adding Section 36.1011, as follows:

Sec. 36.1011. EMERGENCY RULES. (a) Authorizes a board to adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if certain conditions apply.

(b) Prohibits a rule adopted under this section from being effective for longer than 90 days, except as provided by Subsection (c).

(c) Provides that if notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) Requires a rule adopted under this section to be adopted at a meeting held as provided by Chapter 551 (Open Meetings), Government Code.

(e) Provides that this section does not apply to the Edwards Aquifer Authority.

SECTION 3. Amends Sections 36.113 and 36.114, Water Code, as follows:

Sec. 36.113. New title: PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) Requires a district, except as provided by Section 36.117 (Exemptions; Exception; Limitations), to require a permit for certain actions related to wells. Includes operating a well as an activity for which a permit is required. Authorizes a district to require that a change in the withdrawal or use of groundwater during the term of a permit issued by the district not be made unless the district has first approved a permit amendment authorizing the change. Makes a nonsubstantive change.

(a-1) Prohibits a district from requiring a permit or a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.

(b) Requires a district to require that an application for a permit or permit amendment, rather than for a permit, be in writing and sworn to.

(c) Makes a conforming change.

(d) Makes a conforming change.

(e) Makes conforming and nonsubstantive changes.

(f) Authorizes permits and permit amendments to be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the operation of or production of groundwater from certain wells or pumps. Makes conforming and nonsubstantive changes.

(g) Deletes this subsection authorizing a district to require that changes in the withdrawal and use of groundwater under a permit not be made without the prior approval of a permit amendment issued by the district.

Sec. 36.114. New title: PERMIT; PERMIT AMENDMENT; APPLICATION AND HEARING. (a) Requires the district by rule to determine each activity regulated by the district for which a permit or permit amendment is required.

(b) Requires the district, by rule, for each activity for which the district determines a permit or permit amendment is required, to determine whether a hearing on the permit or permit amendment application is required.

(c) Requires the board, for all applications for which a hearing is not required, to act on the application at a meeting unless the board, by rule, has delegated to the general manager the authority to act on the application.

(d) Requires the district to promptly consider and act on each administratively complete application for a permit amendment as provided by Subsection (c) or Subchapter M. Creates this subsection from existing text.

(e) Provides that if, within 60, rather than 30, days after an administratively complete application is submitted, the application has not been acted on or set for a hearing, the applicant may petition the district court for certain remedies. Creates this subsection from existing text. Makes nonsubstantive changes.

(f) Requires an initial hearing under this subsection to be held for applications requiring a hearing within 35 days after the setting of the date. Requires the district to act on the application within 60, rather than 35, days after the date the final hearing on the application is concluded. Creates this subsection from existing text. Makes nonsubstantive changes.

(g) Creates this subsection from existing text.

(h) Creates this subsection from existing text.

SECTION 4. Amends Subchapter L, Chapter 36, Water Code, by adding Section 36.3705, as follows:

Sec. 36.3705. DEFINITION. Defines "applicant."

SECTION 5. Amends Chapter 36, Water Code, by adding Subchapter M, as follows:

SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS;  
NOTICE AND HEARING PROCESS

Sec. 36.401. DEFINITION. Defines "applicant."

Sec. 36.402. APPLICABILITY. Provides that, except as provided by Section 36.416, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications.

Sec. 36.403. SCHEDULING OF HEARING. (a) Authorizes the general manager or board to schedule a hearing on permit or permit amendment applications received by the district as necessary, as provided by Section 36.114.

(b) Authorizes the general manager or board to schedule more than one application for consideration at a hearing.

(c) Requires a hearing to be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location.

(d) Authorizes a hearing to be held in conjunction with a regularly scheduled board meeting.

Sec. 36.404. NOTICE. (a) Requires the general manager or board, if either schedules a hearing on an application for a permit or permit amendment, to give notice of the hearing as provided by this section.

(b) Sets forth the information the notice must include.

(c) Requires the general manager or board, not later than 10 days before the date of the hearing, to provide notice in certain specified ways.

(d) Authorizes a person to request notice from the district of a hearing on a permit or a permit amendment application. Requires the request to be in writing and provides that the request is effective for the remainder of the calendar year in which the request is received by the district. Requires a person to submit a new request to receive notice of a hearing in a later year. Provides that an affidavit of an officer or employee of the district establishing attempted service by certain specified methods is proof that notice was provided by the district.

(e) Provides that failure to provide notice by certain specified methods to any person who has requested notice under Subsection (d) does not invalidate an action taken by the district at the hearing.

Sec. 36.405. HEARING REGISTRATION. Authorizes the district to require each person who participates in a hearing to submit a hearing registration form stating certain information.

Sec. 36.406. HEARING PROCEDURES. (a) Requires a hearing to be conducted by a quorum of the board or by an individual to whom the board has delegated in writing the responsibility to preside as hearings examiner over the hearing or matters related to the hearing.

(b) Requires the board president or the hearings examiner to serve as the presiding officer at the hearing, except as provided by Subsection (c).

(c) Authorizes the directors conducting the hearing, if the hearing is conducted by a quorum of the board and the board president is not present, to select a director to serve as presiding officer.

(d) Sets forth the functions related to the hearing that the presiding officer is authorized to perform.

(e) Authorizes a district, except as provided by a rule adopted under Section 35.415, to allow any person, including the general manager or a district employee, to provide comments at a hearing on an uncontested application.

(f) Authorizes the presiding officer to allow testimony to be submitted in writing and to require that written testimony be sworn to. Authorizes the presiding officer, on motion of a party to the hearing, to exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.

(g) Authorizes the presiding officer, if the board has not acted on the application, to allow a person who testifies at the hearing to supplement the testimony by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. Requires a person who files additional written material with the presiding officer under this subsection to also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. Authorizes a person who receives additional written material under this subsection to file a response to the material with the presiding officer not later than the 10th day after the date the material was received.

(h) Permits the district, by rule adopted under Section 36.417, to authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before board action under Section 36.411 that refers parties to an alternative dispute resolution procedure, apportions costs among the parties, and appoints an impartial third party to facilitate the alternative dispute resolution.

Sec. 36.407. EVIDENCE. Requires the presiding officer to admit evidence that is relevant to an issue at the hearing. Authorizes the presiding officer to exclude evidence that is irrelevant, immaterial, or unduly repetitious.

Sec. 36.408. RECORDING. (a) Requires the presiding officer, except as provided by Subsection (b), to prepare and keep a record of each hearing in certain formats. Requires the presiding officer, on the request of a party to a contested hearing, to have the hearing transcribed by the court reporter. Authorizes the presiding officer to assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Authorizes the presiding officer, except as provided by this subsection, to exclude a party from further participation in a hearing for failure to pay costs assessed under this subsection in a timely manner. Prohibits the presiding officer from excluding a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

(b) Authorizes the presiding officer, if the hearing is uncontested, to substitute minutes or the report required under Section 36.410 for the record of the hearing provided by Subsection (a).

Sec. 36.409. CONTINUANCE. Authorizes the presiding officer to continue a hearing from time to time and from place to place without providing notice under Section 36.404. Requires the presiding officer, if the presiding officer continues a hearing without announcing at the hearing certain information regarding the continued hearing, to provide notice of the continued hearing by regular mail to the parties.

Sec. 36.410. REPORT. (a) Requires the presiding officer, except as provided by Subsection (f), to submit a report to the board not later than the 30th day after a hearing is concluded.

(b) Sets forth the information the report is required to include.

(c) Requires the presiding officer or general manager to provide a copy of the report to certain persons.

(d) Authorizes a person who receives a copy of the report under Subsection (c) to submit to the board written exceptions to the report.

(e) Requires the presiding officer, if the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing as provided by Section 36.408(a), to determine whether to prepare and submit a report under this section.

Sec. 36.411. BOARD ACTION. Requires the board to act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded.

Sec. 36.412. REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS.

(a) Authorizes an applicant in a contested or uncontested hearing on an application or a party to a contested hearing to administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions or a rehearing before the board not later than the 20th day after the date of the board's decision.

(b) Requires the board, on receipt of a timely written request, to make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. Requires the board to provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the board receives the request. Authorizes a person who receives a certified copy of the findings and conclusions from the board to request a rehearing before the board not later than the 20th day after the date the board issues the findings and conclusions.

(c) Requires a request for rehearing to be filed in the district office and to state the grounds for the request. Requires the person requesting the rehearing, if the original hearing was a contested hearing, to provide copies of the request to all parties to the hearing.

(d) Requires the board, if the board grants the request for rehearing, to schedule the rehearing not later than the 45th day after granting the request.

(e) Provides that the failure of the board to grant or deny a request for rehearing before the 91st day after the request is submitted is a denial of the request.

Sec. 36.413. DECISION; WHEN FINAL. (a) Provides that a decision by the board on a permit or permit amendment is final if certain conditions apply.

(b) Authorizes an applicant or a party to a contested hearing, except as provided by Subsection (c), to file a suit against the district under Section 36.251 (authorizing suits by any person or entity affected by any rule or order challenging the validity of the rule or order) to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.

(c) Prohibits an applicant or a party to a contested hearing from filing suit against the district under Section 36.251 if a request for a rehearing was not filed on time.

Sec. 36.414. CONSOLIDATED HEARING ON APPLICATIONS. (a) Requires the district, except as provided by Subsection (b), to process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the district requires a separate permit or permit amendment application for certain activities relating to wells, well pumps, and groundwater.

(b) Provides that a district is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the board cannot adequately evaluate one application until it has acted on another application.

Sec. 36.415. RULES; ADDITIONAL PROCEDURES. (a) Requires a district by rule to adopt procedural rules to implement this subchapter. Authorizes a district to adopt notice and hearing procedures in addition to those provided by this subchapter.

(b) Requires the district, in adopting the rules, to define under what circumstances an application is considered contested, and limit participation in a hearing on a contested application to persons with a personal justiciable interest.

Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. Requires the hearing, if a district contracts with the State Office of Administrative Hearings to conduct a hearing, to be conducted as provided by Subchapters C, D, and F, Chapter 2001 (Administrative Procedure), Government Code.

Sec. 36.417. RULES; ALTERNATIVE DISPUTE RESOLUTION. Authorizes a district, by rule, to develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009 (Alternative Dispute Resolution for use by Governmental Bodies), Government Code.

Sec. 36.418. APPLICABILITY OF ADMINISTRATIVE PROCEDURE. (a) Authorizes a district to adopt rules establishing procedures for contested hearings consistent with Subchapters C, D, and F, Chapter 2001, Government Code, including the authority to issue a subpoena, require a deposition, or order other discovery.

(b) Provides that, except as provided by Section 36.416, Chapter 2001, Government Code, does not apply to a hearing under this subchapter.

Sec. 36.419. EDWARDS AQUIFER AUTHORITY. (a) Provides that this subchapter does not apply to the Edwards Aquifer Authority, except as provided by Subchapter (b).

(b) Provides that Sections 36.412 and 36.413 apply to the Edwards Aquifer Authority.

SECTION 6. Repealer: Section 36.001(17) (defining "applicant"), Water Code.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2005.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 3, 2005**

**TO:** Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE:** **SB344** by Duncan (Relating to the notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts. ), **Committee Report 1st House, Substituted**

<b>No fiscal implication to the State is anticipated.</b>
---

The bill would establish procedures that a groundwater conservation district would be required to follow when posting notice of conducting a hearing for the purpose of rulemaking or for considering permit and permit amendment applications, when conducting the hearings, when considering requests for permits and permit amendments, and when making decisions related to requests for rehearings on permit and permit amendment applications. The bill would also prohibit a permit or permit amendment applicant, or a party to a contested hearing, from filing suit against the district if a request for rehearing was not filed on time.

The bill would take effect September 1, 2005 and would apply only to an application for a permit or a permit amendment application determined to be administratively complete or a rulemaking hearing for which notice is given by a groundwater conservation district on or after that date.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated as a result of the administrative responsibilities that would be imposed on a groundwater conservation district by the provisions of the bill. The prohibition of an applicant filing suit would provide a savings in potential legal expenses to a district.

**Source Agencies:**

**LBB Staff:** JOB, WK, DLBa



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 27, 2005**

**TO:** Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: SB344** by Duncan (Relating to the notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts.), **As Introduced**

<b>No fiscal implication to the State is anticipated.</b>
---

The bill would amend Section 36.101 of the Water Code to add procedures a groundwater conservation district (GWCD) must follow regarding posting notice of a rulemaking hearing and how the hearing must be conducted. Subchapter D, Chapter 36, Water Code would be amended to authorize the board of a GWCD to adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, under certain circumstances identified in the bill.

The bill would amend various sections of Chapter 36 of the Water Code and create a new subchapter to establish procedures for processing permit amendments and permit applications and for the associated hearings.

The bill would take effect September 1, 2005 and would apply only to a permit or permit amendment application hearing or a rulemaking hearing held by a GWCD on or after that date.

**Local Government Impact**

The Bee GWCD estimates the district would incur additional costs to implement provisions of the bill. The district estimates the costs would be about \$5,400 the first year of implementation (\$5,000 for revising and publishing rules, \$250 for copying costs, \$150 for public notices), dropping to \$250 each year thereafter (\$100 for copying and \$150 for public notices). The Panhandle GWCD estimates operational costs and staff costs would total about \$11,500 in fiscal year 2006 to approximately \$12,900 by fiscal year 2010. However, the Mesa district reports that its rules already exceed the requirements of the bill, and therefore, the district would experience no fiscal impact.

The additional procedural requirements that would apply to a GWCD could create an increase in costs, which would vary by district; however, those costs are not expected to be significant.

**Source Agencies:** 580 Water Development Board, 582 Commission on Environmental Quality, 592 Soil and Water Conservation Board

**LBB Staff:** JOB, WK, DLBa

# REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN  
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that SB 344, by Duncan,  
(Bill No.) (Author/Sponsor)  
was heard by the Committee on Natural Resources on 4/28/05,  
2005,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Kelly C. McHart  
(Clerk of the reporting committee)

**IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.**

ADOPTED

31-0

MAY 12 2005

*Atty. Gen.*  
Secretary of the Senate

S.B. No. 344

By: DUNSTON

Substitute the following for S.B. No. 344:

By: [Signature]

C.S. S.B. No. 344

A BILL TO BE ENTITLED

AN ACT

relating to the notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.101, Water Code, is amended by amending Subsection (b) and adding Subsections (d) <sup>through</sup> (1) to read as follows:

(b) Except as provided by Section 36.1011, after [After] notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board. ~~[Notice in this section shall include publication of the agenda of the hearing in one or more newspapers of general circulation in the county or counties in which the district is located.]~~

(d) Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:

(1) post notice in a place readily accessible to the public at the district office;

(2) provide notice to the county clerk of each county in the district;

(3) publish notice in one or more newspapers of general circulation in the county or counties in which the district is located;

(4) provide notice by mail, facsimile, or electronic

1 mail to any person who has requested notice under Subsection (i);  
2 and

3 (5) make available a copy of all proposed rules at a  
4 place accessible to the public during normal business hours and, if  
5 the district has a website, post an electronic copy on a generally  
6 accessible Internet site.

7 (e) The notice provided under Subsection (d) must include:

8 (1) the time, date, and location of the rulemaking  
9 hearing;

10 (2) a brief explanation of the subject of the  
11 rulemaking hearing; and

12 (3) a location or Internet site at which a copy of the  
13 proposed rules may be reviewed or copied.

14 (f) The presiding officer shall conduct a rulemaking  
15 hearing in the manner the presiding officer determines to be most  
16 appropriate to obtain information and comments relating to the  
17 proposed rule as conveniently and expeditiously as possible.  
18 Comments may be submitted orally at the hearing or in writing. The  
19 presiding officer may hold the record open for a specified period  
20 after the conclusion of the hearing to receive additional written  
21 comments.

22 (g) A district may require each person who participates in a  
23 rulemaking hearing to submit a hearing registration form stating:

24 (1) the person's name;

25 (2) the person's address; and

26 (3) whom the person represents, if the person is not at  
27 the hearing in the person's individual capacity.

1       (h) The presiding officer shall prepare and keep a record of  
2 each rulemaking hearing in the form of an audio or video recording  
3 or a court reporter transcription.

4       (i) A person may submit to the district a written request  
5 for notice of a rulemaking hearing. A request is effective for the  
6 remainder of the calendar year in which the request is received by  
7 the district. To receive notice of a rulemaking hearing in a later  
8 year, a person must submit a new request. An affidavit of an  
9 officer or employee of the district establishing attempted service  
10 by first class mail, facsimile, or e-mail to the person in  
11 accordance with the information provided by the person is proof  
12 that notice was provided by the district.

13       (j) A district may use an informal conference or  
14 consultation to obtain the opinions and advice of interested  
15 persons about contemplated rules and may appoint advisory  
16 committees of experts, interested persons, or public  
17 representatives to advise the district about contemplated rules.

18       (k) Failure to provide notice under Subsection (d)(4) does  
19 not invalidate an action taken by the district at a rulemaking  
20 hearing.

21       (l) Subsections (b)-(k) do not apply to the Edwards Aquifer  
22 Authority.

23       SECTION 2. Subchapter D, Chapter 36, Water Code, is amended  
24 by adding Section 36.1011 to read as follows:

25       Sec. 36.1011. EMERGENCY RULES. (a) A board may adopt an  
26 emergency rule without prior notice or hearing, or with an  
27 abbreviated notice and hearing, if the board:

1           (1) finds that a substantial likelihood of imminent  
2 peril to the public health, safety, or welfare, or a requirement of  
3 state or federal law, requires adoption of a rule on less than 20  
4 days' notice; and

5           (2) prepares a written statement of the reasons for  
6 its finding under Subdivision (1).

7           (b) Except as provided by Subsection (c), a rule adopted  
8 under this section may not be effective for longer than 90 days.

9           (c) If notice of a hearing on the final rule is given not  
10 later than the 90th day after the date the rule is adopted, the rule  
11 is effective for an additional 90 days.

12           (d) A rule adopted under this section must be adopted at a  
13 meeting held as provided by Chapter 551, Government Code.

14           (e) This section does not apply to the Edwards Aquifer  
15 Authority.

16           SECTION 3. Sections 36.113 and 36.114, Water Code, are  
17 amended to read as follows:

18           Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a)  
19 Except as provided by Section 36.117, a [A] district shall require a  
20 permit [~~permits~~] for the drilling, equipping, operating, or  
21 completing of wells or for substantially altering the size of wells  
22 or well pumps. A district may require that a change in the  
23 withdrawal or use of groundwater during the term of a permit issued  
24 by the district may not be made unless the district has first  
25 approved a permit amendment authorizing the change.

26           (a-1) A district may not require a permit or a permit  
27 amendment for maintenance or repair of a well if the maintenance or

1 repair does not increase the production capabilities of the well to  
2 more than its authorized or permitted production rate.

3 (b) A district shall require that an application for a  
4 permit or a permit amendment be in writing and sworn to.

5 (c) A district may require that the following be included in  
6 the permit or permit amendment application:

7 (1) the name and mailing address of the applicant and  
8 the owner of the land on which the well will be located;

9 (2) if the applicant is other than the owner of the  
10 property, documentation establishing the applicable authority to  
11 construct and operate a well for the proposed use;

12 (3) a statement of the nature and purpose of the  
13 proposed use and the amount of water to be used for each purpose;

14 (4) a water conservation plan or a declaration that  
15 the applicant will comply with the district's management plan;

16 (5) the location of each well and the estimated rate at  
17 which water will be withdrawn;

18 (6) a water well closure plan or a declaration that the  
19 applicant will comply with well plugging guidelines and report  
20 closure to the commission; and

21 (7) a drought contingency plan.

22 (d) Before granting or denying a permit or permit amendment,  
23 the district shall consider whether:

24 (1) the application conforms to the requirements  
25 prescribed by this chapter and is accompanied by the prescribed  
26 fees;

27 (2) the proposed use of water unreasonably affects

1 existing groundwater and surface water resources or existing permit  
2 holders;

3 (3) the proposed use of water is dedicated to any  
4 beneficial use;

5 (4) the proposed use of water is consistent with the  
6 district's certified water management plan;

7 (5) the applicant has agreed to avoid waste and  
8 achieve water conservation; and

9 (6) the applicant has agreed that reasonable diligence  
10 will be used to protect groundwater quality and that the applicant  
11 will follow well plugging guidelines at the time of well closure.

12 (e) The district may impose more restrictive permit  
13 conditions on new permit applications and permit amendment  
14 applications to increase ~~[increased]~~ use by historic users if the  
15 limitations:

16 (1) apply to all subsequent new permit applications  
17 and permit amendment applications to increase ~~[increased]~~ use by  
18 historic users, regardless of type or location of use;

19 (2) bear a reasonable relationship to the existing  
20 district management plan; and

21 (3) are reasonably necessary to protect existing use.

22 (f) Permits and permit amendments may be issued subject to  
23 the rules promulgated by the district and subject to terms and  
24 provisions with reference to the drilling, equipping, completion,  
25 [or] alteration, or operation of, or production of groundwater  
26 from, [or] wells or pumps that may be necessary to prevent waste and  
27 achieve water conservation, minimize as far as practicable the



1 drawdown of the water table or the reduction of artesian pressure,  
2 lessen interference between wells, or control and prevent  
3 subsidence.

4 ~~[(g) A district may require that changes in the withdrawal~~  
5 ~~and use of groundwater under a permit not be made without the prior~~  
6 ~~approval of a permit amendment issued by the district.]~~

7 Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND  
8 HEARING. (a) The district by rule shall determine each activity  
9 regulated by the district for which a permit or permit amendment is  
10 required.

11 (b) For each activity for which the district determines a  
12 permit or permit amendment is required under Subsection (a), the  
13 district by rule shall determine whether a hearing on the permit or  
14 permit amendment application is required.

15 (c) For all applications for which a hearing is not required  
16 under Subsection (b), the board shall act on the application at a  
17 meeting, as defined by Section 551.001, Government Code, unless the  
18 board by rule has delegated to the general manager the authority to  
19 act on the application.

20 (d) The district shall promptly consider and act on each  
21 administratively complete application for a permit or permit  
22 amendment as provided by Subsection (c) or Subchapter M.

23 (e) If, within 60 ~~[30]~~ days after the date an ~~[the]~~  
24 administratively complete application is submitted, the ~~[an]~~  
25 application has not been acted on or set for a hearing on a specific  
26 date, the applicant may petition the district court of the county  
27 where the land is located for a writ of mandamus to compel the

1 district to act on the application or set a date for a hearing on the  
2 application, as appropriate.

3 (f) For applications requiring a hearing, the initial [A]  
4 hearing shall be held within 35 days after the setting of the date,  
5 and the district shall act on the application within 60 [35] days  
6 after the date [of] the final hearing on the application is  
7 concluded.

8 (g) The district may by rule set a time when an application  
9 will expire if the information requested in the application is not  
10 provided to the district.

11 (h) An administratively complete application requires  
12 information set forth in accordance with Sections 36.113 and  
13 36.1131.

14 SECTION 4. Subchapter L, Chapter 36, Water Code, is amended  
15 by adding Section 36.3705 to read as follows:

16 Sec. 36.3705. DEFINITION. In this subchapter, "applicant"  
17 means a newly confirmed district applying for a loan from the loan  
18 fund.

19 SECTION 5. Chapter 36, Water Code, is amended by adding  
20 Subchapter M to read as follows:

21 SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS;

22 NOTICE AND HEARING PROCESS

23 Sec. 36.401. DEFINITION. In this subchapter, "applicant"  
24 means a person who is applying for a permit or a permit amendment.

25 Sec. 36.402. APPLICABILITY. Except as provided by Section  
26 36.416, this subchapter applies to the notice and hearing process  
27 used by a district for permit and permit amendment applications.

1       Sec. 36.403. SCHEDULING OF HEARING. (a) The general  
2 manager or board may schedule a hearing on permit or permit  
3 amendment applications received by the district as necessary, as  
4 provided by Section 36.114.

5       (b) The general manager or board may schedule more than one  
6 application for consideration at a hearing.

7       (c) A hearing must be held at the district office or regular  
8 meeting location of the board unless the board provides for  
9 hearings to be held at a different location.

10       (d) A hearing may be held in conjunction with a regularly  
11 scheduled board meeting.

12       Sec. 36.404. NOTICE. (a) If the general manager or board  
13 schedules a hearing on an application for a permit or permit  
14 amendment, the general manager or board shall give notice of the  
15 hearing as provided by this section.

16       (b) The notice must include:

17           (1) the name of the applicant;

18           (2) the address or approximate location of the well or  
19 proposed well;

20           (3) a brief explanation of the proposed permit or  
21 permit amendment, including any requested amount of groundwater,  
22 the purpose of the proposed use, and any change in use;

23           (4) the time, date, and location of the hearing; and

24           (5) any other information the general manager or board  
25 considers relevant and appropriate.

26       (c) Not later than the 10th day before the date of a hearing,  
27 the general manager or board shall:

1           (1) post notice in a place readily accessible to the  
2 public at the district office;

3           (2) provide notice to the county clerk of each county  
4 in the district; and

5           (3) provide notice by:

6                   (A) regular mail to the applicant;

7                   (B) regular mail, facsimile, or electronic mail  
8 to any person who has requested notice under Subsection (d); and

9                   (C) regular mail to any other person entitled to  
10 receive notice under the rules of the district.

11           (d) A person may request notice from the district of a  
12 hearing on a permit or a permit amendment application. The request  
13 must be in writing and is effective for the remainder of the  
14 calendar year in which the request is received by the district. To  
15 receive notice of a hearing in a later year, a person must submit a  
16 new request. An affidavit of an officer or employee of the district  
17 establishing attempted service by first class mail, facsimile, or  
18 e-mail to the person in accordance with the information provided by  
19 the person is proof that notice was provided by the district.

20           (e) Failure to provide notice under Subsection (c)(3)(B)  
21 does not invalidate an action taken by the district at the hearing.

22           Sec. 36.405. HEARING REGISTRATION. The district may  
23 require each person who participates in a hearing to submit a  
24 hearing registration form stating:

25                   (1) the person's name;

26                   (2) the person's address; and

27                   (3) whom the person represents, if the person is not

1 there in the person's individual capacity.

2 Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be  
3 conducted by:

4 (1) a quorum of the board; or

5 (2) an individual to whom the board has delegated in  
6 writing the responsibility to preside as a hearings examiner over  
7 the hearing or matters related to the hearing.

8 (b) Except as provided by Subsection (c), the board  
9 president or the hearings examiner shall serve as the presiding  
10 officer at the hearing.

11 (c) If the hearing is conducted by a quorum of the board and  
12 the board president is not present, the directors conducting the  
13 hearing may select a director to serve as the presiding officer.

14 (d) The presiding officer may:

15 (1) convene the hearing at the time and place  
16 specified in the notice;

17 (2) set any necessary additional hearing dates;

18 (3) designate the parties regarding a contested  
19 application;

20 (4) establish the order for presentation of evidence;

21 (5) administer oaths to all persons presenting  
22 testimony;

23 (6) examine persons presenting testimony;

24 (7) ensure that information and testimony are  
25 introduced as conveniently and expeditiously as possible without  
26 prejudicing the rights of any party;

27 (8) prescribe reasonable time limits for testimony and

1 the presentation of evidence; and

2 (9) exercise the procedural rules adopted under  
3 Section 36.415.

4 (e) Except as provided by a rule adopted under Section  
5 36.415, a district may allow any person, including the general  
6 manager or a district employee, to provide comments at a hearing on  
7 an uncontested application.

8 (f) The presiding officer may allow testimony to be  
9 submitted in writing and may require that written testimony be  
10 sworn to. On the motion of a party to the hearing, the presiding  
11 officer may exclude written testimony if the person who submits the  
12 testimony is not available for cross-examination by phone, a  
13 deposition before the hearing, or other reasonable means.

14 (g) If the board has not acted on the application, the  
15 presiding officer may allow a person who testifies at the hearing to  
16 supplement the testimony given at the hearing by filing additional  
17 written materials with the presiding officer not later than the  
18 10th day after the date of the hearing. A person who files  
19 additional written material with the presiding officer under this  
20 subsection must also provide the material, not later than the 10th  
21 day after the date of the hearing, to any person who provided  
22 comments on an uncontested application or any party to a contested  
23 hearing. A person who receives additional written material under  
24 this subsection may file a response to the material with the  
25 presiding officer not later than the 10th day after the date the  
26 material was received.

27 (h) The district by rule adopted under Section 36.417 may

1 authorize the presiding officer, at the presiding officer's  
2 discretion, to issue an order at any time before board action under  
3 Section 36.411 that:

4 (1) refers parties to a contested hearing to an  
5 alternative dispute resolution procedure on any matter at issue in  
6 the hearing;

7 (2) determines how the costs of the procedure shall be  
8 apportioned among the parties; and

9 (3) appoints an impartial third party as provided by  
10 Section 2009.053, Government Code, to facilitate that procedure.

11 Sec. 36.407. EVIDENCE. (a) The presiding officer shall  
12 admit evidence that is relevant to an issue at the hearing.

13 (b) The presiding officer may exclude evidence that is  
14 irrelevant, immaterial, or unduly repetitious.

15 Sec. 36.408. RECORDING. (a) Except as provided by  
16 Subsection (b), the presiding officer shall prepare and keep a  
17 record of each hearing in the form of an audio or video recording or  
18 a court reporter transcription. On the request of a party to a  
19 contested hearing, the presiding officer shall have the hearing  
20 transcribed by a court reporter. The presiding officer may assess  
21 any court reporter transcription costs against the party that  
22 requested the transcription or among the parties to the hearing.  
23 Except as provided by this subsection, the presiding officer may  
24 exclude a party from further participation in a hearing for failure  
25 to pay in a timely manner costs assessed against that party under  
26 this subsection. The presiding officer may not exclude a party from  
27 further participation in a hearing as provided by this subsection

1 if the parties have agreed that the costs assessed against that  
2 party will be paid by another party.

3 (b) If a hearing is uncontested, the presiding officer may  
4 substitute minutes or the report required under Section 36.410 for  
5 a method of recording the hearing provided by Subsection (a).

6 Sec. 36.409. CONTINUANCE. The presiding officer may  
7 continue a hearing from time to time and from place to place without  
8 providing notice under Section 36.404. If the presiding officer  
9 continues a hearing without announcing at the hearing the time,  
10 date, and location of the continued hearing, the presiding officer  
11 must provide notice of the continued hearing by regular mail to the  
12 parties.

13 Sec. 36.410. REPORT. (a) Except as provided by Subsection  
14 (e), the presiding officer shall submit a report to the board not  
15 later than the 30th day after the date a hearing is concluded.

16 (b) The report must include:

17 (1) a summary of the subject matter of the hearing;

18 (2) a summary of the evidence or public comments  
19 received; and

20 (3) the presiding officer's recommendations for board  
21 action on the subject matter of the hearing.

22 (c) The presiding officer or general manager shall provide a  
23 copy of the report to:

24 (1) the applicant; and

25 (2) each person who provided comments or each  
26 designated party.

27 (d) A person who receives a copy of the report under



1 Subsection (c) may submit to the board written exceptions to the  
2 report.

3 (e) If the hearing was conducted by a quorum of the board and  
4 if the presiding officer prepared a record of the hearing as  
5 provided by Section 36.408(a), the presiding officer shall  
6 determine whether to prepare and submit a report to the board under  
7 this section.

8 Sec. 36.411. BOARD ACTION. The board shall act on a permit  
9 or permit amendment application not later than the 60th day after  
10 the date the final hearing on the application is concluded.

11 Sec. 36.412. REQUEST FOR REHEARING OR FINDINGS AND  
12 CONCLUSIONS. (a) An applicant in a contested or uncontested  
13 hearing on an application or a party to a contested hearing may  
14 administratively appeal a decision of the board on a permit or  
15 permit amendment application by requesting written findings and  
16 conclusions or a rehearing before the board not later than the 20th  
17 day after the date of the board's decision.

18 (b) On receipt of a timely written request, the board shall  
19 make written findings and conclusions regarding a decision of the  
20 board on a permit or permit amendment application. The board shall  
21 provide certified copies of the findings and conclusions to the  
22 person who requested them, and to each person who provided comments  
23 or each designated party, not later than the 35th day after the date  
24 the board receives the request. A person who receives a certified  
25 copy of the findings and conclusions from the board may request a  
26 rehearing before the board not later than the 20th day after the  
27 date the board issues the findings and conclusions.

1       (c) A request for rehearing must be filed in the district  
2 office and must state the grounds for the request. If the original  
3 hearing was a contested hearing, the person requesting a rehearing  
4 must provide copies of the request to all parties to the hearing.

5       (d) If the board grants a request for rehearing, the board  
6 shall schedule the rehearing not later than the 45th day after the  
7 date the request is granted.

8       (e) The failure of the board to grant or deny a request for  
9 rehearing before the 91st day after the date the request is  
10 submitted is a denial of the request.

11       Sec. 36.413. DECISION; WHEN FINAL. (a) A decision by the  
12 board on a permit or permit amendment application is final:

13           (1) if a request for rehearing is not filed on time, on  
14 the expiration of the period for filing a request for rehearing; or

15           (2) if a request for rehearing is filed on time, on the  
16 date:

17                   (A) the board denies the request for rehearing;  
18 or

19                   (B) the board renders a written decision after  
20 rehearing.

21       (b) Except as provided by Subsection (c), an applicant or a  
22 party to a contested hearing may file a suit against the district  
23 under Section 36.251 to appeal a decision on a permit or permit  
24 amendment application not later than the 60th day after the date on  
25 which the decision becomes final.

26       (c) An applicant or a party to a contested hearing may not  
27 file suit against the district under Section 36.251 if a request for

1 rehearing was not filed on time.

2 Sec. 36.414. CONSOLIDATED HEARING ON APPLICATIONS. (a)  
3 Except as provided by Subsection (b), a district shall process  
4 applications from a single applicant under consolidated notice and  
5 hearing procedures on written request by the applicant if the  
6 district requires a separate permit or permit amendment application  
7 for:

8 (1) drilling, equipping, operating, or completing a  
9 well or substantially altering the size of a well or well pump under  
10 Section 36.113;

11 (2) the spacing of water wells or the production of  
12 groundwater under Section 36.116; or

13 (3) transferring groundwater out of a district under  
14 Section 36.122.

15 (b) A district is not required to use consolidated notice  
16 and hearing procedures to process separate permit or permit  
17 amendment applications from a single applicant if the board cannot  
18 adequately evaluate one application until it has acted on another  
19 application.

20 Sec. 36.415. RULES; ADDITIONAL PROCEDURES. (a) A district  
21 by rule shall adopt procedural rules to implement this subchapter  
22 and may adopt notice and hearing procedures in addition to those  
23 provided by this subchapter.

24 (b) In adopting the rules, a district shall:

25 (1) define under what circumstances an application is  
26 considered contested; and

27 (2) limit participation in a hearing on a contested

1 application to persons who have a personal justiciable interest  
2 related to a legal right, duty, privilege, power, or economic  
3 interest that is within a district's regulatory authority and  
4 affected by a permit or permit amendment application, not including  
5 persons who have an interest common to members of the public.

6 Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF  
7 ADMINISTRATIVE HEARINGS. If a district contracts with the State  
8 Office of Administrative Hearings to conduct a hearing, the hearing  
9 shall be conducted as provided by Subchapters C, D, and F, Chapter  
10 2001, Government Code.

11 Sec. 36.417. RULES; ALTERNATIVE DISPUTE RESOLUTION. A  
12 district by rule may develop and use alternative dispute resolution  
13 procedures in the manner provided for governmental bodies under  
14 Chapter 2009, Government Code.

15 Sec. 36.418. APPLICABILITY OF ADMINISTRATIVE PROCEDURE  
16 ACT. (a) A district may adopt rules establishing procedures for  
17 contested hearings consistent with Subchapters C, D, and F, Chapter  
18 2001, Government Code, including the authority to issue a subpoena,  
19 require a deposition, or order other discovery.

20 (b) Except as provided by this section and Section 36.416,  
21 Chapter 2001, Government Code, does not apply to a hearing under  
22 this subchapter.

23 Sec. 36.419. EDWARDS AQUIFER AUTHORITY. (a) Except as  
24 provided by Subsection (b), this subchapter does not apply to the  
25 Edwards Aquifer Authority.

26 (b) Sections 36.412 and 36.413 apply to the Edwards Aquifer  
27 Authority.

*Subdivision (17),*

SECTION 6. <sup>^</sup>Section 36.001~~(17)~~, Water Code, is repealed.

SECTION 7. The change in law made by this Act applies only to a permit or permit amendment application determined to be administratively complete or a rulemaking hearing for which notice is given by a groundwater conservation district on or after the effective date of this Act. A permit or permit amendment application determined to be administratively complete or a rulemaking hearing for which notice was given by a groundwater conservation district before the effective date of this Act is governed by the law in effect at the time the application was determined to be administratively complete or the notice was given, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2005.

Engrossed May 12, 2005  
Mandi Alexander  
Engrossing Clerk

By: Duncan

S.B. No. 344

A BILL TO BE ENTITLED

AN ACT

relating to the notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.101, Water Code, is amended by amending Subsection (b) and adding Subsections (d) through (l) to read as follows:

(b) Except as provided by Section 36.1011, after ~~[After]~~ notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board. ~~[Notice in this section shall include publication of the agenda of the hearing in one or more newspapers of general circulation in the county or counties in which the district is located.]~~

(d) Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:

(1) post notice in a place readily accessible to the public at the district office;

(2) provide notice to the county clerk of each county in the district;

(3) publish notice in one or more newspapers of general circulation in the county or counties in which the district is located;

(4) provide notice by mail, facsimile, or electronic

1 mail to any person who has requested notice under Subsection (i);  
2 and

3 (5) make available a copy of all proposed rules at a  
4 place accessible to the public during normal business hours and, if  
5 the district has a website, post an electronic copy on a generally  
6 accessible Internet site.

7 (e) The notice provided under Subsection (d) must include:

8 (1) the time, date, and location of the rulemaking  
9 hearing;

10 (2) a brief explanation of the subject of the  
11 rulemaking hearing; and

12 (3) a location or Internet site at which a copy of the  
13 proposed rules may be reviewed or copied.

14 (f) The presiding officer shall conduct a rulemaking  
15 hearing in the manner the presiding officer determines to be most  
16 appropriate to obtain information and comments relating to the  
17 proposed rule as conveniently and expeditiously as possible.  
18 Comments may be submitted orally at the hearing or in writing. The  
19 presiding officer may hold the record open for a specified period  
20 after the conclusion of the hearing to receive additional written  
21 comments.

22 (g) A district may require each person who participates in a  
23 rulemaking hearing to submit a hearing registration form stating:

24 (1) the person's name;

25 (2) the person's address; and

26 (3) whom the person represents, if the person is not at  
27 the hearing in the person's individual capacity.

1        (h) The presiding officer shall prepare and keep a record of  
2 each rulemaking hearing in the form of an audio or video recording  
3 or a court reporter transcription.

4        (i) A person may submit to the district a written request  
5 for notice of a rulemaking hearing. A request is effective for the  
6 remainder of the calendar year in which the request is received by  
7 the district. To receive notice of a rulemaking hearing in a later  
8 year, a person must submit a new request. An affidavit of an  
9 officer or employee of the district establishing attempted service  
10 by first class mail, facsimile, or e-mail to the person in  
11 accordance with the information provided by the person is proof  
12 that notice was provided by the district.

13        (j) A district may use an informal conference or  
14 consultation to obtain the opinions and advice of interested  
15 persons about contemplated rules and may appoint advisory  
16 committees of experts, interested persons, or public  
17 representatives to advise the district about contemplated rules.

18        (k) Failure to provide notice under Subsection (d)(4) does  
19 not invalidate an action taken by the district at a rulemaking  
20 hearing.

21        (l) Subsections (b)-(k) do not apply to the Edwards Aquifer  
22 Authority.

23        SECTION 2. Subchapter D, Chapter 36, Water Code, is amended  
24 by adding Section 36.1011 to read as follows:

25        Sec. 36.1011. EMERGENCY RULES. (a) A board may adopt an  
26 emergency rule without prior notice or hearing, or with an  
27 abbreviated notice and hearing, if the board:



1           (1) finds that a substantial likelihood of imminent  
2 peril to the public health, safety, or welfare, or a requirement of  
3 state or federal law, requires adoption of a rule on less than 20  
4 days' notice; and

5           (2) prepares a written statement of the reasons for  
6 its finding under Subdivision (1).

7           (b) Except as provided by Subsection (c), a rule adopted  
8 under this section may not be effective for longer than 90 days.

9           (c) If notice of a hearing on the final rule is given not  
10 later than the 90th day after the date the rule is adopted, the rule  
11 is effective for an additional 90 days.

12           (d) A rule adopted under this section must be adopted at a  
13 meeting held as provided by Chapter 551, Government Code.

14           (e) This section does not apply to the Edwards Aquifer  
15 Authority.

16           SECTION 3. Sections 36.113 and 36.114, Water Code, are  
17 amended to read as follows:

18           Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS.

19           (a) Except as provided by Section 36.117, a [A] district shall  
20 require a permit [~~permits~~] for the drilling, equipping, operating,  
21 or completing of wells or for substantially altering the size of  
22 wells or well pumps. A district may require that a change in the  
23 withdrawal or use of groundwater during the term of a permit issued  
24 by the district may not be made unless the district has first  
25 approved a permit amendment authorizing the change.

26           (a-1) A district may not require a permit or a permit  
27 amendment for maintenance or repair of a well if the maintenance or

1 repair does not increase the production capabilities of the well to  
2 more than its authorized or permitted production rate.

3 (b) A district shall require that an application for a  
4 permit or a permit amendment be in writing and sworn to.

5 (c) A district may require that the following be included in  
6 the permit or permit amendment application:

7 (1) the name and mailing address of the applicant and  
8 the owner of the land on which the well will be located;

9 (2) if the applicant is other than the owner of the  
10 property, documentation establishing the applicable authority to  
11 construct and operate a well for the proposed use;

12 (3) a statement of the nature and purpose of the  
13 proposed use and the amount of water to be used for each purpose;

14 (4) a water conservation plan or a declaration that  
15 the applicant will comply with the district's management plan;

16 (5) the location of each well and the estimated rate at  
17 which water will be withdrawn;

18 (6) a water well closure plan or a declaration that the  
19 applicant will comply with well plugging guidelines and report  
20 closure to the commission; and

21 (7) a drought contingency plan.

22 (d) Before granting or denying a permit or permit amendment,  
23 the district shall consider whether:

24 (1) the application conforms to the requirements  
25 prescribed by this chapter and is accompanied by the prescribed  
26 fees;

27 (2) the proposed use of water unreasonably affects

1 existing groundwater and surface water resources or existing permit  
2 holders;

3 (3) the proposed use of water is dedicated to any  
4 beneficial use;

5 (4) the proposed use of water is consistent with the  
6 district's certified water management plan;

7 (5) the applicant has agreed to avoid waste and  
8 achieve water conservation; and

9 (6) the applicant has agreed that reasonable diligence  
10 will be used to protect groundwater quality and that the applicant  
11 will follow well plugging guidelines at the time of well closure.

12 (e) The district may impose more restrictive permit  
13 conditions on new permit applications and permit amendment  
14 applications to increase ~~[increased]~~ use by historic users if the  
15 limitations:

16 (1) apply to all subsequent new permit applications  
17 and permit amendment applications to increase ~~[increased]~~ use by  
18 historic users, regardless of type or location of use;

19 (2) bear a reasonable relationship to the existing  
20 district management plan; and

21 (3) are reasonably necessary to protect existing use.

22 (f) Permits and permit amendments may be issued subject to  
23 the rules promulgated by the district and subject to terms and  
24 provisions with reference to the drilling, equipping, completion,  
25 ~~[or]~~ alteration, or operation of, or production of groundwater  
26 from, [or] wells or pumps that may be necessary to prevent waste and  
27 achieve water conservation, minimize as far as practicable the

drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

~~[(g) A district may require that changes in the withdrawal and use of groundwater under a permit not be made without the prior approval of a permit amendment issued by the district.]~~

Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND HEARING. (a) The district by rule shall determine each activity regulated by the district for which a permit or permit amendment is required.

(b) For each activity for which the district determines a permit or permit amendment is required under Subsection (a), the district by rule shall determine whether a hearing on the permit or permit amendment application is required.

(c) For all applications for which a hearing is not required under Subsection (b), the board shall act on the application at a meeting, as defined by Section 551.001, Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.

(d) The district shall promptly consider and act on each administratively complete application for a permit or permit amendment as provided by Subsection (c) or Subchapter M.

(e) If, within 60 ~~[30]~~ days after the date an ~~[the]~~ administratively complete application is submitted, the ~~[an]~~ application has not been acted on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the

1 district to act on the application or set a date for a hearing on the  
2 application, as appropriate.

3 (f) For applications requiring a hearing, the initial [A]  
4 hearing shall be held within 35 days after the setting of the date,  
5 and the district shall act on the application within 60 [35] days  
6 after the date [of] the final hearing on the application is  
7 concluded.

8 (g) The district may by rule set a time when an application  
9 will expire if the information requested in the application is not  
10 provided to the district.

11 (h) An administratively complete application requires  
12 information set forth in accordance with Sections 36.113 and  
13 36.1131.

14 SECTION 4. Subchapter L, Chapter 36, Water Code, is amended  
15 by adding Section 36.3705 to read as follows:

16 Sec. 36.3705. DEFINITION. In this subchapter, "applicant"  
17 means a newly confirmed district applying for a loan from the loan  
18 fund.

19 SECTION 5. Chapter 36, Water Code, is amended by adding  
20 Subchapter M to read as follows:

21 SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS;

22 NOTICE AND HEARING PROCESS

23 Sec. 36.401. DEFINITION. In this subchapter, "applicant"  
24 means a person who is applying for a permit or a permit amendment.

25 Sec. 36.402. APPLICABILITY. Except as provided by Section  
26 36.416, this subchapter applies to the notice and hearing process  
27 used by a district for permit and permit amendment applications.

1       Sec. 36.403. SCHEDULING OF HEARING. (a) The general  
2 manager or board may schedule a hearing on permit or permit  
3 amendment applications received by the district as necessary, as  
4 provided by Section 36.114.

5       (b) The general manager or board may schedule more than one  
6 application for consideration at a hearing.

7       (c) A hearing must be held at the district office or regular  
8 meeting location of the board unless the board provides for  
9 hearings to be held at a different location.

10       (d) A hearing may be held in conjunction with a regularly  
11 scheduled board meeting.

12       Sec. 36.404. NOTICE. (a) If the general manager or board  
13 schedules a hearing on an application for a permit or permit  
14 amendment, the general manager or board shall give notice of the  
15 hearing as provided by this section.

16       (b) The notice must include:

17               (1) the name of the applicant;

18               (2) the address or approximate location of the well or  
19 proposed well;

20               (3) a brief explanation of the proposed permit or  
21 permit amendment, including any requested amount of groundwater,  
22 the purpose of the proposed use, and any change in use;

23               (4) the time, date, and location of the hearing; and

24               (5) any other information the general manager or board  
25 considers relevant and appropriate.

26       (c) Not later than the 10th day before the date of a hearing,  
27 the general manager or board shall:

1           (1) post notice in a place readily accessible to the  
2 public at the district office;

3           (2) provide notice to the county clerk of each county  
4 in the district; and

5           (3) provide notice by:

6                   (A) regular mail to the applicant;

7                   (B) regular mail, facsimile, or electronic mail  
8 to any person who has requested notice under Subsection (d); and

9                   (C) regular mail to any other person entitled to  
10 receive notice under the rules of the district.

11          (d) A person may request notice from the district of a  
12 hearing on a permit or a permit amendment application. The request  
13 must be in writing and is effective for the remainder of the  
14 calendar year in which the request is received by the district. To  
15 receive notice of a hearing in a later year, a person must submit a  
16 new request. An affidavit of an officer or employee of the district  
17 establishing attempted service by first class mail, facsimile, or  
18 e-mail to the person in accordance with the information provided by  
19 the person is proof that notice was provided by the district.

20          (e) Failure to provide notice under Subsection (c)(3)(B)  
21 does not invalidate an action taken by the district at the hearing.

22          Sec. 36.405. HEARING REGISTRATION. The district may  
23 require each person who participates in a hearing to submit a  
24 hearing registration form stating:

25                   (1) the person's name;

26                   (2) the person's address; and

27                   (3) whom the person represents, if the person is not

1 there in the person's individual capacity.

2 Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be  
3 conducted by:

4 (1) a quorum of the board; or

5 (2) an individual to whom the board has delegated in  
6 writing the responsibility to preside as a hearings examiner over  
7 the hearing or matters related to the hearing.

8 (b) Except as provided by Subsection (c), the board  
9 president or the hearings examiner shall serve as the presiding  
10 officer at the hearing.

11 (c) If the hearing is conducted by a quorum of the board and  
12 the board president is not present, the directors conducting the  
13 hearing may select a director to serve as the presiding officer.

14 (d) The presiding officer may:

15 (1) convene the hearing at the time and place  
16 specified in the notice;

17 (2) set any necessary additional hearing dates;

18 (3) designate the parties regarding a contested  
19 application;

20 (4) establish the order for presentation of evidence;

21 (5) administer oaths to all persons presenting  
22 testimony;

23 (6) examine persons presenting testimony;

24 (7) ensure that information and testimony are  
25 introduced as conveniently and expeditiously as possible without  
26 prejudicing the rights of any party;

27 (8) prescribe reasonable time limits for testimony and



1 the presentation of evidence; and

2 (9) exercise the procedural rules adopted under  
3 Section 36.415.

4 (e) Except as provided by a rule adopted under Section  
5 36.415, a district may allow any person, including the general  
6 manager or a district employee, to provide comments at a hearing on  
7 an uncontested application.

8 (f) The presiding officer may allow testimony to be  
9 submitted in writing and may require that written testimony be  
10 sworn to. On the motion of a party to the hearing, the presiding  
11 officer may exclude written testimony if the person who submits the  
12 testimony is not available for cross-examination by phone, a  
13 deposition before the hearing, or other reasonable means.

14 (g) If the board has not acted on the application, the  
15 presiding officer may allow a person who testifies at the hearing to  
16 supplement the testimony given at the hearing by filing additional  
17 written materials with the presiding officer not later than the  
18 10th day after the date of the hearing. A person who files  
19 additional written material with the presiding officer under this  
20 subsection must also provide the material, not later than the 10th  
21 day after the date of the hearing, to any person who provided  
22 comments on an uncontested application or any party to a contested  
23 hearing. A person who receives additional written material under  
24 this subsection may file a response to the material with the  
25 presiding officer not later than the 10th day after the date the  
26 material was received.

27 (h) The district by rule adopted under Section 36.417 may

1 authorize the presiding officer, at the presiding officer's  
2 discretion, to issue an order at any time before board action under  
3 Section 36.411 that:

4 (1) refers parties to a contested hearing to an  
5 alternative dispute resolution procedure on any matter at issue in  
6 the hearing;

7 (2) determines how the costs of the procedure shall be  
8 apportioned among the parties; and

9 (3) appoints an impartial third party as provided by  
10 Section 2009.053, Government Code, to facilitate that procedure.

11 Sec. 36.407. EVIDENCE. (a) The presiding officer shall  
12 admit evidence that is relevant to an issue at the hearing.

13 (b) The presiding officer may exclude evidence that is  
14 irrelevant, immaterial, or unduly repetitious.

15 Sec. 36.408. RECORDING. (a) Except as provided by  
16 Subsection (b), the presiding officer shall prepare and keep a  
17 record of each hearing in the form of an audio or video recording or  
18 a court reporter transcription. On the request of a party to a  
19 contested hearing, the presiding officer shall have the hearing  
20 transcribed by a court reporter. The presiding officer may assess  
21 any court reporter transcription costs against the party that  
22 requested the transcription or among the parties to the hearing.  
23 Except as provided by this subsection, the presiding officer may  
24 exclude a party from further participation in a hearing for failure  
25 to pay in a timely manner costs assessed against that party under  
26 this subsection. The presiding officer may not exclude a party from  
27 further participation in a hearing as provided by this subsection

1 if the parties have agreed that the costs assessed against that  
2 party will be paid by another party.

3 (b) If a hearing is uncontested, the presiding officer may  
4 substitute minutes or the report required under Section 36.410 for  
5 a method of recording the hearing provided by Subsection (a).

6 Sec. 36.409. CONTINUANCE. The presiding officer may  
7 continue a hearing from time to time and from place to place without  
8 providing notice under Section 36.404. If the presiding officer  
9 continues a hearing without announcing at the hearing the time,  
10 date, and location of the continued hearing, the presiding officer  
11 must provide notice of the continued hearing by regular mail to the  
12 parties.

13 Sec. 36.410. REPORT. (a) Except as provided by Subsection  
14 (e), the presiding officer shall submit a report to the board not  
15 later than the 30th day after the date a hearing is concluded.

16 (b) The report must include:

17 (1) a summary of the subject matter of the hearing;

18 (2) a summary of the evidence or public comments  
19 received; and

20 (3) the presiding officer's recommendations for board  
21 action on the subject matter of the hearing.

22 (c) The presiding officer or general manager shall provide a  
23 copy of the report to:

24 (1) the applicant; and

25 (2) each person who provided comments or each  
26 designated party.

27 (d) A person who receives a copy of the report under

1 Subsection (c) may submit to the board written exceptions to the  
2 report.

3 (e) If the hearing was conducted by a quorum of the board and  
4 if the presiding officer prepared a record of the hearing as  
5 provided by Section 36.408(a), the presiding officer shall  
6 determine whether to prepare and submit a report to the board under  
7 this section.

8 Sec. 36.411. BOARD ACTION. The board shall act on a permit  
9 or permit amendment application not later than the 60th day after  
10 the date the final hearing on the application is concluded.

11 Sec. 36.412. REQUEST FOR REHEARING OR FINDINGS AND  
12 CONCLUSIONS. (a) An applicant in a contested or uncontested  
13 hearing on an application or a party to a contested hearing may  
14 administratively appeal a decision of the board on a permit or  
15 permit amendment application by requesting written findings and  
16 conclusions or a rehearing before the board not later than the 20th  
17 day after the date of the board's decision.

18 (b) On receipt of a timely written request, the board shall  
19 make written findings and conclusions regarding a decision of the  
20 board on a permit or permit amendment application. The board shall  
21 provide certified copies of the findings and conclusions to the  
22 person who requested them, and to each person who provided comments  
23 or each designated party, not later than the 35th day after the date  
24 the board receives the request. A person who receives a certified  
25 copy of the findings and conclusions from the board may request a  
26 rehearing before the board not later than the 20th day after the  
27 date the board issues the findings and conclusions.

1        (c) A request for rehearing must be filed in the district  
2 office and must state the grounds for the request. If the original  
3 hearing was a contested hearing, the person requesting a rehearing  
4 must provide copies of the request to all parties to the hearing.

5        (d) If the board grants a request for rehearing, the board  
6 shall schedule the rehearing not later than the 45th day after the  
7 date the request is granted.

8        (e) The failure of the board to grant or deny a request for  
9 rehearing before the 91st day after the date the request is  
10 submitted is a denial of the request.

11        Sec. 36.413. DECISION; WHEN FINAL. (a) A decision by the  
12 board on a permit or permit amendment application is final:

13                (1) if a request for rehearing is not filed on time, on  
14 the expiration of the period for filing a request for rehearing; or

15                (2) if a request for rehearing is filed on time, on the  
16 date:

17                        (A) the board denies the request for rehearing;  
18 or

19                        (B) the board renders a written decision after  
20 rehearing.

21        (b) Except as provided by Subsection (c), an applicant or a  
22 party to a contested hearing may file a suit against the district  
23 under Section 36.251 to appeal a decision on a permit or permit  
24 amendment application not later than the 60th day after the date on  
25 which the decision becomes final.

26        (c) An applicant or a party to a contested hearing may not  
27 file suit against the district under Section 36.251 if a request for

1 rehearing was not filed on time.

2 Sec. 36.414. CONSOLIDATED HEARING ON APPLICATIONS.

3 (a) Except as provided by Subsection (b), a district shall process  
4 applications from a single applicant under consolidated notice and  
5 hearing procedures on written request by the applicant if the  
6 district requires a separate permit or permit amendment application  
7 for:

8 (1) drilling, equipping, operating, or completing a  
9 well or substantially altering the size of a well or well pump under  
10 Section 36.113;

11 (2) the spacing of water wells or the production of  
12 groundwater under Section 36.116; or

13 (3) transferring groundwater out of a district under  
14 Section 36.122.

15 (b) A district is not required to use consolidated notice  
16 and hearing procedures to process separate permit or permit  
17 amendment applications from a single applicant if the board cannot  
18 adequately evaluate one application until it has acted on another  
19 application.

20 Sec. 36.415. RULES; ADDITIONAL PROCEDURES. (a) A district  
21 by rule shall adopt procedural rules to implement this subchapter  
22 and may adopt notice and hearing procedures in addition to those  
23 provided by this subchapter.

24 (b) In adopting the rules, a district shall:

25 (1) define under what circumstances an application is  
26 considered contested; and

27 (2) limit participation in a hearing on a contested

1 application to persons who have a personal justiciable interest  
2 related to a legal right, duty, privilege, power, or economic  
3 interest that is within a district's regulatory authority and  
4 affected by a permit or permit amendment application, not including  
5 persons who have an interest common to members of the public.

6 Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF  
7 ADMINISTRATIVE HEARINGS. If a district contracts with the State  
8 Office of Administrative Hearings to conduct a hearing, the hearing  
9 shall be conducted as provided by Subchapters C, D, and F, Chapter  
10 2001, Government Code.

11 Sec. 36.417. RULES; ALTERNATIVE DISPUTE RESOLUTION. A  
12 district by rule may develop and use alternative dispute resolution  
13 procedures in the manner provided for governmental bodies under  
14 Chapter 2009, Government Code.

15 Sec. 36.418. APPLICABILITY OF ADMINISTRATIVE PROCEDURE  
16 ACT. (a) A district may adopt rules establishing procedures for  
17 contested hearings consistent with Subchapters C, D, and F, Chapter  
18 2001, Government Code, including the authority to issue a subpoena,  
19 require a deposition, or order other discovery.

20 (b) Except as provided by this section and Section 36.416,  
21 Chapter 2001, Government Code, does not apply to a hearing under  
22 this subchapter.

23 Sec. 36.419. EDWARDS AQUIFER AUTHORITY. (a) Except as  
24 provided by Subsection (b), this subchapter does not apply to the  
25 Edwards Aquifer Authority.

26 (b) Sections 36.412 and 36.413 apply to the Edwards Aquifer  
27 Authority.

1       SECTION 6. Subdivision (17), Section 36.001, Water Code, is  
2 repealed.

3       SECTION 7. The change in law made by this Act applies only  
4 to a permit or permit amendment application determined to be  
5 administratively complete or a rulemaking hearing for which notice  
6 is given by a groundwater conservation district on or after the  
7 effective date of this Act. A permit or permit amendment  
8 application determined to be administratively complete or a  
9 rulemaking hearing for which notice was given by a groundwater  
10 conservation district before the effective date of this Act is  
11 governed by the law in effect at the time the application was  
12 determined to be administratively complete or the notice was given,  
13 and the former law is continued in effect for that purpose.

14       SECTION 8. This Act takes effect September 1, 2005.



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 3, 2005**

**TO:** Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: SB344** by Duncan (Relating to the notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts. ), **Committee Report 1st House, Substituted**

<b>No fiscal implication to the State is anticipated.</b>
---

The bill would establish procedures that a groundwater conservation district would be required to follow when posting notice of conducting a hearing for the purpose of rulemaking or for considering permit and permit amendment applications, when conducting the hearings, when considering requests for permits and permit amendments, and when making decisions related to requests for rehearings on permit and permit amendment applications. The bill would also prohibit a permit or permit amendment applicant, or a party to a contested hearing, from filing suit against the district if a request for rehearing was not filed on time.

The bill would take effect September 1, 2005 and would apply only to an application for a permit or a permit amendment application determined to be administratively complete or a rulemaking hearing for which notice is given by a groundwater conservation district on or after that date.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated as a result of the administrative responsibilities that would be imposed on a groundwater conservation district by the provisions of the bill. The prohibition of an applicant filing suit would provide a savings in potential legal expenses to a district.

**Source Agencies:**

**LBB Staff:** JOB, WK, DLBa

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 27, 2005**

**TO:** Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: SB344** by Duncan (Relating to the notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts.), **As Introduced**

<b>No fiscal implication to the State is anticipated.</b>
---

The bill would amend Section 36.101 of the Water Code to add procedures a groundwater conservation district (GWCD) must follow regarding posting notice of a rulemaking hearing and how the hearing must be conducted. Subchapter D, Chapter 36, Water Code would be amended to authorize the board of a GWCD to adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, under certain circumstances identified in the bill.

The bill would amend various sections of Chapter 36 of the Water Code and create a new subchapter to establish procedures for processing permit amendments and permit applications and for the associated hearings.

The bill would take effect September 1, 2005 and would apply only to a permit or permit amendment application hearing or a rulemaking hearing held by a GWCD on or after that date.

**Local Government Impact**

The Bee GWCD estimates the district would incur additional costs to implement provisions of the bill. The district estimates the costs would be about \$5,400 the first year of implementation (\$5,000 for revising and publishing rules, \$250 for copying costs, \$150 for public notices), dropping to \$250 each year thereafter (\$100 for copying and \$150 for public notices). The Panhandle GWCD estimates operational costs and staff costs would total about \$11,500 in fiscal year 2006 to approximately \$12,900 by fiscal year 2010. However, the Mesa district reports that its rules already exceed the requirements of the bill, and therefore, the district would experience no fiscal impact.

The additional procedural requirements that would apply to a GWCD could create an increase in costs, which would vary by district; however, those costs are not expected to be significant.

**Source Agencies:** 580 Water Development Board, 582 Commission on Environmental Quality, 592 Soil and Water Conservation Board

**LBB Staff:** JOB, WK, DLBa

S.B. No.

344

By

Robt. Owen

A BILL TO BE ENTITLED

AN ACT:

relating to the notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts.

FEB 03 2005

Filed with the Secretary of the Senate

FEB 07 2005

Read and referred to Committee on NATURAL RESOURCES

Reported favorably

MAY 03 2005

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

MAY 12 2005

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by:

{ unanimous consent

{ \_\_\_\_ yeas, \_\_\_\_ nays

MAY 12 2005

Read second time, \_\_\_\_\_, and ordered engrossed by:

{ ~~unanimous consent~~  
a viva voce vote

{ \_\_\_\_ yeas, \_\_\_\_ nays

MAY 12 2005

Senate and Constitutional 3 Day Rule suspended by a vote of 31 yeas, 0 nays.

MAY 12 2005

Read third time, \_\_\_\_\_, and passed by:

{ ~~A viva voce vote~~

{ 31 yeas, 0 nays

Lataf Law  
SECRETARY OF THE SENATE

OTHER ACTION:

May 12, 2005 Engrossed

May 12, 2005 Sent to House

Engrossing Clerk

Mardi Alford

MAY 12 2005

Received from the Senate

MAY 12 2005

Read first time and referred to Committee on Natural Resources

Reported \_\_\_\_ favorably (as amended) (as substituted)

Sent to Committee on (Calendars) (Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of \_\_\_\_ yeas, \_\_\_\_ nays, \_\_\_\_ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of \_\_\_\_ yeas, \_\_\_\_ nays, \_\_\_\_ present, not voting.

Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of \_\_\_\_ yeas, \_\_\_\_ nays, \_\_\_\_ present, not voting)

Returned to Senate.

Returned from House without amendment.

Returned from House with \_\_\_\_ amendments.

Concurred in House amendments by a viva voce vote \_\_\_\_ yeas, \_\_\_\_ nays.

CHIEF CLERK OF THE HOUSE

\_\_\_\_\_ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

\_\_\_\_\_ Senate conferees instructed.

\_\_\_\_\_ Senate conferees appointed: \_\_\_\_\_, Chairman; \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_

\_\_\_\_\_ House granted Senate request. House conferees appointed: \_\_\_\_\_, Chairman;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ Conference Committee Report read and filed with the Secretary of the Senate.

\_\_\_\_\_ Conference Committee Report adopted on the part of the House by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

\_\_\_\_\_ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

**OTHER ACTION:**

\_\_\_\_\_ Recommitted to Conference Committee

\_\_\_\_\_ Conferees discharged.

\_\_\_\_\_ Conference Committee Report failed of adoption by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays